

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) AUGUST 16, 2021
 ELIZABETH A. HOLMES,)
) PAGES 1 - 73
 DEFENDANT.)
 _____)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP
BY: KEVIN M. DOWNEY
LANCE A. WADE
RICHARD CLEARY
KATHERINE TREFZ
AMY SAHARIA
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

SAN JOSE, CALIFORNIA

AUGUST 16, 2021

P R O C E E D I N G S

(COURT CONVENED AT 9:02 A.M.)

THE COURT: LET'S CALL OUR MORNING MATTER. THIS IS
18-258, UNITED STATES VERSUS ELIZABETH HOLMES.

LET ME FIRST CAPTURE THE APPEARANCE OF THE PARTIES AGAIN,
PLEASE.

WHO APPEARS FOR THE GOVERNMENT?

MR. SCHENK: GOOD MORNING, YOUR HONOR.

JEFF SCHENK, ROBERT LEACH, JOHN BOSTIC, AND KELLY VOLKAR
ON BEHALF OF THE UNITED STATES.

THE COURT: THANK YOU. GOOD MORNING.

AND FOR THE DEFENDANT?

MR. DOWNEY: GOOD MORNING, YOUR HONOR.

KEVIN DOWNEY FROM WILLIAMS & CONNOLLY ON BEHALF OF
MS. HOLMES.

WITH ME ARE LANCE WADE, AMY SAHARIA, KATHERINE TREFZ AND
RICHARD CLEARY.

THE COURT: THANK YOU. GOOD MORNING.

MR. DOWNEY: THE DEFENDANT IS ALSO PRESENT IN COURT.

THE COURT: THANK YOU. GOOD MORNING.

THIS IS THE DATE AND TIME WE SET FOR A FURTHER PRETRIAL
CONFERENCE, AND WE SCHEDULED THIS THIS MORNING.

I DID RECEIVE YOUR DOCUMENT 907, WHICH IS YOUR JOINT
STATUS REPORT. THANK YOU FOR THAT. THAT WAS HELPFUL.

09:03AM 1 I THINK WE'LL GO OVER THE ITEMS THAT ARE CONTAINED IN YOUR
09:03AM 2 REPORT, AND THEN I HAVE SOME OTHER, JUST SOME OTHER
09:03AM 3 PRELIMINARY, I'LL CALL THEM, HOUSEKEEPING ISSUES THAT I'D LIKE
09:03AM 4 TO DISCUSS ABOUT THE TRIAL.

09:03AM 5 BEFORE I START WITH YOUR REPORT, I THOUGHT WE WOULD JUST
09:03AM 6 GO DOWN THE ITEMS THERE. WE WILL PROBABLY TALK LATER THIS
09:03AM 7 MORNING ABOUT THE INSTRUCTIONS, PRELIMINARY INSTRUCTIONS, BUT I
09:03AM 8 THOUGHT I WOULD JUST GO THROUGH YOUR REPORT.

09:03AM 9 BEFORE WE DO THAT, ANYTHING ANYONE WANTS TO STATE BEFORE
09:03AM 10 WE BEGIN?

09:03AM 11 MR. DOWNEY: YOUR HONOR, I JUST -- WE CAN DO IT WHEN
09:03AM 12 IT COMES IN THE CHECKLIST OR NOW.

09:03AM 13 YOUR HONOR HAD ASKED AT THE LAST CONFERENCE THAT WE INFORM
09:04AM 14 YOU IF THERE WAS A SENSE AS TO WHAT WOULD BE A WORKABLE TRIAL
09:04AM 15 DATE IN LIGHT OF ANY PARTICULAR ISSUES. WE HAVE DONE THAT, AND
09:04AM 16 I CAN MAKE SUGGESTIONS TO THE COURT EITHER NOW OR LATER.

09:04AM 17 THE COURT: OKAY. WELL, LET ME -- THERE WAS ONE
09:04AM 18 THING I WANTED TO TALK ABOUT IS OUR TRIAL -- I'M SORRY, I'M
09:04AM 19 TRYING TO POSITION MYSELF HERE.

09:04AM 20 THIS WEEK I BELIEVE THE JURORS HAVE BEEN SUMMONED TO COME
09:04AM 21 IN THURSDAY AND FRIDAY, I BELIEVE THE 19TH AND 20TH. TOMORROW
09:04AM 22 WE'LL RECEIVE THE QUESTIONNAIRES THAT YOU'RE DUPLICATING, WE'LL
09:04AM 23 PROVIDE THOSE TO THE SUMMONED JURORS, THEY WILL COMPLETE THOSE
09:04AM 24 IN TWO DIFFERENT DAYS ON THOSE DAYS. WE'LL HAVE THOSE BACK.

09:04AM 25 MY INTENT THEN WAS TO COLLECT THOSE, PROVIDE THEM TO

09:04AM 1 COUNSEL. COUNSEL WOULD THEN COPY THEM, AND WE'RE GOING TO
09:05AM 2 DISCUSS THE AMOUNTS OF COPIES AND FOR WHAT PARTIES. YOU WOULD
09:05AM 3 THEN RETURN THE ORIGINALS TO THE COURT FOR KEEPING.

09:05AM 4 WE WOULD THEN COME BACK ON THE 31ST IS WHAT I THINK WE
09:05AM 5 HAVE SCHEDULED NOW FOR JURY SELECTION. THAT WOULD BE THE FIRST
09:05AM 6 DAY OF JURY SELECTION.

09:05AM 7 I ANTICIPATE THAT WE WILL PROBABLY TAKE PERHAPS TWO DAYS
09:05AM 8 TO SELECT A JURY JUST BECAUSE OF THE QUESTIONNAIRE AND THOSE
09:05AM 9 THINGS AND SOME ADDITIONAL VOIR DIRE THAT I'LL TALK ABOUT
09:05AM 10 LATER.

09:05AM 11 MY HOPE IS THAT WE COULD SECURE A JURY BY THE END OF
09:05AM 12 WEDNESDAY THE 1ST AND HAVE OUR PANEL SWORN ON THAT DATE.

09:05AM 13 LOOKING AT THE SCHEDULE, WE ARE SCHEDULED TO BE DARK, THAT
09:05AM 14 IS NOT IN SESSION, ON THE 2ND AND 3RD, THAT'S THURSDAY AND
09:05AM 15 FRIDAY. AND THAT IS THE LABOR DAY WEEKEND, SO MONDAY THE 6TH
09:05AM 16 WE WOULD NOT BE IN SESSION.

09:06AM 17 THE 7TH IS TUESDAY, AND I ALSO -- I THINK YOU'RE ALL
09:06AM 18 PROBABLY AWARE THAT THAT ALSO IS ROSH HASHANAH, AND I INTEND TO
09:06AM 19 RESPECT THE RELIGIOUS HOLIDAYS. SO RECOGNIZING THAT, WE WOULD
09:06AM 20 NOT BE IN SESSION ON 7TH, WHICH IS A TUESDAY.

09:06AM 21 WE WOULD THEN BEGIN WITH THE TRIAL PROPER ON THE 8TH OF
09:06AM 22 SEPTEMBER IN THE MORNING. THAT'S THE SCHEDULE THAT I HAD,
09:06AM 23 MR. DOWNEY, AS I LOOKED AT THE CALENDAR. I DON'T KNOW IF THAT
09:06AM 24 IS HELPFUL TO YOU.

09:06AM 25 MR. DOWNEY: THAT IS HELPFUL. IT'S NOT WHAT I WAS

09:06AM 1 GOING TO COMMENT ON, AND I THINK IT'S HELPFUL TO KNOW THAT, AND
09:06AM 2 I KNOW THAT MEMBERS OF OUR TEAM APPRECIATE THAT ARRANGEMENT.

09:06AM 3 THE COURT: OKAY.

09:06AM 4 MR. SCHENK: THAT WORKS FOR THE GOVERNMENT. THANK
09:06AM 5 YOU VERY MUCH.

09:06AM 6 THE COURT: OKAY. THANK YOU.

09:06AM 7 BUT YOU HAD SOMETHING ELSE YOU WANTED --

09:06AM 8 MR. DOWNEY: I WAS JUST GOING TO MAKE A SUGGESTION,
09:06AM 9 AND IT MAY NOT BE THE LOGICAL PLACE, AS TO WITHIN DAYS, YOU
09:06AM 10 KNOW, THE PLACE AT WHICH IT MIGHT BE LOGICAL TO TAKE BREAKS
09:07AM 11 JUST TO ANTICIPATE A TRIAL DAY SCHEDULE AS OPPOSED TO THE DAYS
09:07AM 12 WE WOULD BE THERE. SO WE CAN DO THAT NOW OR LATER.

09:07AM 13 THE COURT: I SEE. LET ME TELL YOU MY THOUGHT ON
09:07AM 14 THAT IS I WOULD LIKE TO CONCLUDE OUR DAILY SESSIONS BY
09:07AM 15 2:00 P.M. IF POSSIBLE. THAT'S A GOAL THAT I'VE SET, AND THAT
09:07AM 16 MEANS WE START AT 9:00 O'CLOCK AT LEAST NOW, 9:00 O'CLOCK.

09:07AM 17 MY THOUGHT IS THAT WE WOULD PERHAPS SPLIT THE DAY AND HAVE
09:07AM 18 WHATEVER HOURS WE CAN AND MAYBE HAVE ONE BREAK, THERE MIGHT BE
09:07AM 19 A 2 HOUR SESSION AT A TIME, AND THEN HAVE ONE 20 MINUTE BREAK,
09:07AM 20 SOMETHING LIKE THAT, 30 MINUTE BREAK, AND THEN COMPLETE THE
09:07AM 21 DAY.

09:07AM 22 OF COURSE, WE'LL TAKE BREAKS AS NEEDED, AND I WILL ADVISE
09:07AM 23 THE JURY OF THAT, THAT IF SOMEONE NEEDS TO TAKE AN UNSCHEDULED
09:07AM 24 BREAK FOR ANY REASON, WE'LL, OF COURSE, ACCOMMODATE THAT.

09:07AM 25 BUT MY THOUGHT IS BECAUSE OF THE LENGTH OF THE TRIAL, THAT

09:07AM 1 IS THE DURATION OF IT, FATIGUE SETS IN FOR JURORS, WE ALL KNOW
09:08AM 2 THAT. SO MY THOUGHT WAS TO KEEP THE DAY, CAPTURE AS MUCH AS WE
09:08AM 3 CAN, BUT TO END THE DAY AROUND 2:00 AT THE LATEST.

09:08AM 4 NOW, THIS IS ALL DEPENDENT ALSO ON THE MAKEUP OF OUR JURY
09:08AM 5 PANEL BECAUSE, YOU KNOW, WE HAVE JURORS FROM AS FAR AS
09:08AM 6 KING CITY SOUTH FROM SAN BENITO COUNTY AND SANTA CRUZ AREA TO
09:08AM 7 THE WEST.

09:08AM 8 SO DEPENDENT ON THEIR GEOGRAPHIC LOCATION, WE MAY BE ABLE
09:08AM 9 TO START EARLIER AT 8:30. THAT'S SOMETHING ELSE THAT I WOULD
09:08AM 10 LOOK AT, WHICH WILL AFFORD US SOME ADDITIONAL TRIAL TIME, AND
09:08AM 11 WE'LL SCHEDULE ACCORDINGLY.

09:08AM 12 BUT WE'RE NOT GOING TO GO UNTIL 5:00. WE'RE NOT GOING TO
09:08AM 13 DO A 9:00 TO 5:00 TRIAL, AND THAT'S FOR A COUPLE OF REASONS:
09:08AM 14 FATIGUE AND ALSO IN OUR CURRENT SITUATION. I WANT THE JURORS
09:08AM 15 TO FEEL LIKE THEY'RE NOT IN AN ENCLOSED CONFINEMENT FOR ALL OF
09:09AM 16 THAT TIME FOR FIVE TO SEVEN HOURS AT A TIME.

09:09AM 17 I SHOULD TELL, IF I'M NOT MISTAKEN, I'LL GET THE STAT ON
09:09AM 18 THIS, BUT I'VE TALKED ABOUT THE FILTRATION WE HAVE IN THIS
09:09AM 19 COURTHOUSE, AND IT'S THE HEPA 13 OR 14. I WAS ALSO INFORMED
09:09AM 20 THAT THE AIR AT LEAST IN MY COURTROOM AND I THINK OTHERS
09:09AM 21 CIRCULATES COMPLETELY I THINK IT'S NINE MINUTES, I THINK EVERY
09:09AM 22 NINE MINUTES THE AIR, OWING TO OUR SYSTEM, RECIRCULATES IN ITS
09:09AM 23 ENTIRETY. WE'LL HAVE OTHER FILTERS AND THINGS PUT UP, BUT I
09:09AM 24 DON'T WANT TO GET INTO THAT JUST NOW.

09:09AM 25 I DON'T KNOW IF THAT'S --

09:09AM 1 MR. DOWNEY: YOUR HONOR, THAT'S FINE. I THINK FROM
09:09AM 2 OUR PERSPECTIVE IF THE SCHEDULE ACCOMMODATES A BREAK EVERY TWO
09:09AM 3 TO TWO AND A HALF HOURS, I THINK DURING THE COURSE OF THE DAY
09:09AM 4 WE'LL NEED PROBABLY ONE LONG BREAK AS I THINK THAT SCHEDULE
09:09AM 5 ANTICIPATES. WE MAY NEED SOMETHING MORE ALONG THE LINES OR
09:09AM 6 40 MINUTES INSTEAD OF 30 MINUTES, ALTHOUGH AS WE GO OVER TIME
09:09AM 7 WE MAY BE ABLE TO ADJUST. SO MY REQUEST IS ONLY FOR THAT AND
09:09AM 8 WHATEVER SCHEDULE WORKS WITH THAT IS FINE.

09:10AM 9 WHAT YOUR HONOR HAS DESCRIBED I THINK IS CONSISTENT WITH
09:10AM 10 THAT, SO THAT'S FINE WITH US.

09:10AM 11 THE COURT: OKAY. THANK YOU.

09:10AM 12 MR. SCHENK, ANYTHING ABOUT THIS?

09:10AM 13 MR. SCHENK: NO. THE SCHEDULE PROPOSED BY THE COURT
09:10AM 14 IS CERTAINLY FINE WITH THE GOVERNMENT, AND THE SUGGESTIONS THAT
09:10AM 15 MR. DOWNEY MAKES ARE ALSO FINE WITH THE GOVERNMENT. WHATEVER
09:10AM 16 WORKS FOR THE COURT.

09:10AM 17 THE COURT: ALL RIGHT. THANK YOU.

09:10AM 18 MY SENSE IS THAT WE WILL, AS WE BEGIN THE CASE AND AS THE
09:10AM 19 CASE UNFOLDS, WE'RE GOING TO DEVELOP OUR OWN FEEL FOR THINGS,
09:10AM 20 AS TRIALS DO, AND IT MAY BE THAT WE'LL GO A LITTLE LATER
09:10AM 21 BECAUSE OF NECESSITY OF A WITNESS OR AN EXHIBIT OR SOMETHING,
09:10AM 22 AND WE MIGHT START EARLY OR -- YOU KNOW, BUT THAT'S HOW TRIALS
09:10AM 23 ARE, THEY'RE KIND OF A MOVEABLE FEAST. SO WE'LL SEE HOW IT
09:10AM 24 WORKS.

09:10AM 25 MR. SCHENK: YOUR HONOR, ONE THOUGHT.

09:10AM 1 THE COURT SUGGESTED THAT IT HOPED TO HAVE A JURY SELECTED
09:10AM 2 BY WEDNESDAY BUT THEN MAYBE TAKE ABOUT A WEEK BREAK AND NOT
09:10AM 3 BEGIN OPENINGS OR HEAR EVIDENCE FOR ANOTHER WEEK. WOULD IT BE
09:10AM 4 THAT THE COURT'S PLAN TO SWEAR THE JURY AT THE END OF THE DAY
09:10AM 5 ON WEDNESDAY OR WOULD IT FORMALLY SWEAR THE JURY IN THE MORNING
09:10AM 6 OF I THINK IT'S THE 8TH OR WEDNESDAY, SEPTEMBER 8TH?

09:11AM 7 THE COURT: WELL, MY THOUGHT WAS TO SWEAR -- IMPANEL
09:11AM 8 THE JURY, SWEAR THE JURY AS SOON AS WE HAVE, YOU HAVE AGREEMENT
09:11AM 9 ON YOUR JURY, AND THEN THE COURT WOULD ADMONISH ACCORDINGLY AS
09:11AM 10 TO WHAT THEY THE JURY, AND THE THINGS THAT THEY NEED TO DO TO
09:11AM 11 STAY AWAY FROM -- TO KEEP FREE AND TO KEEP AN OPEN MIND. THERE
09:11AM 12 ARE INSTRUCTIONS THAT SPEAK TO THAT.

09:11AM 13 SO THAT WAS MY THOUGHT RATHER THAN TO SELECT THE JURY AND
09:11AM 14 THEN SWEAR THEM AFTERWARDS. IT JUST SEEMS TO ME IT MAKES SENSE
09:11AM 15 TO GET THE JURY IMPANELED, SWORN, JEOPARDY ATTACHES AT THAT
09:11AM 16 POINT AND THEN WE GO FORWARD.

09:11AM 17 MR. DOWNEY: THAT'S FINE WITH US, YOUR HONOR.

09:11AM 18 MR. SCHENK: RIGHT. I UNDERSTAND SOMETIMES WHEN
09:11AM 19 COURTS TAKE A BREAK BETWEEN THE SELECTION AND THE ACTUAL
09:11AM 20 BEGINNING OF TRIAL THEY ADMONISH THE JURY, THEY EXPLAIN TO THE
09:11AM 21 JURY WHAT THEY'RE NOT ALLOWED TO RECEIVE ACCESS TO, BUT THEY
09:11AM 22 CHOOSE TO ACTUALLY SWEAR THEM THE MORNING THAT THE EVIDENCE
09:12AM 23 BEGINS.

09:12AM 24 WE DEFER TO THE COURT ON THAT DECISION, BUT I ONLY RAISE
09:12AM 25 IT BECAUSE I KNOW SOME COURT'S PRACTICE SWEARING RIGHT BEFORE

09:12AM 1 THE BEGINNING OF EVIDENCE.

09:12AM 2 THE COURT: RIGHT. WELL, THANK YOU.

09:12AM 3 WHAT WE'LL DO IS IF I SWEAR THEM ONCE WE SELECT OR ONCE
09:12AM 4 YOU SELECT YOUR JURY, THEN I'LL REMIND THEM, OF COURSE, I'LL
09:12AM 5 ADMONISH THEM AS BEST I CAN FOR THAT BREAK, AND THEN WHEN WE
09:12AM 6 RETURN, I'LL ALSO SPEAK TO THEM ALSO ABOUT THEIR OBLIGATIONS
09:12AM 7 AND AGAIN REMIND THEM OF THAT.

09:12AM 8 I ALSO WANTED TO TALK -- WE'LL TALK A LITTLE BIT ABOUT
09:12AM 9 SOME OF THE PROTOCOLS THAT MIGHT ENGAGE. WE HAVE TO BE
09:12AM 10 THINKING AHEAD ABOUT IF THERE ARE OR IF FOR WHATEVER REASON
09:12AM 11 THERE NECESSITATES A NEED TO TAKE A RECESS IN THE TRIAL, THAT'S
09:12AM 12 SOMETHING THAT I THINK WE SHOULD ALSO BE COGNIZANT OF FOR
09:12AM 13 WHATEVER REASON. AND LET ME JUST SAY IF THERE'S A HEALTH ISSUE
09:12AM 14 THAT COMES UP, WE'LL HAVE TO DISCUSS A PROTOCOL. I'M SURE
09:12AM 15 YOU'VE THOUGHT ABOUT AS TO WHAT THAT RECESS WOULD BE AND HOW WE
09:13AM 16 WOULD MANAGE THAT.

09:13AM 17 BUT THESE ARE ALL THINGS THAT I THINK WE'RE THINKING ABOUT
09:13AM 18 NOW IN THE CURRENT CLIMATE.

09:13AM 19 OKAY.

09:13AM 20 MR. DOWNEY: THANK YOU, YOUR HONOR.

09:13AM 21 THE COURT: ALL RIGHT. LET'S GO THROUGH YOUR STATUS
09:13AM 22 REPORT, PLEASE. I'M ON DOCKET 907, THE QUESTIONNAIRE, I THINK
09:13AM 23 WE JUST TALKED ABOUT THAT.

09:13AM 24 IS THERE ANY ISSUE AS TO THE QUESTIONNAIRE?

09:13AM 25 MR. DOWNEY: YOUR HONOR, I ONLY HAVE A LOGISTICS

09:13AM 1 QUESTION RELATED TO IT, WHICH IS THEY WILL BE COMPLETING IT ON
09:13AM 2 BOTH THURSDAY AND FRIDAY OF THIS WEEK.

09:13AM 3 SHOULD WE, SHOULD WE -- THE WAY THE ARRANGEMENTS HAVE BEEN
09:13AM 4 AGREED TO AMONG THE PARTIES, THE GOVERNMENT IS GOING TO PRINT
09:13AM 5 THE COPIES THAT WILL BE AVAILABLE FOR THE COURT TOMORROW, AND
09:13AM 6 THEN WE'RE GOING TO PICK UP THE COPIES AND SCAN THEM AND MAKE
09:14AM 7 THEM AVAILABLE ACCORDING TO THE COURT'S INSTRUCTIONS.

09:14AM 8 IN PICKING THEM UP, SHOULD WE PICK THEM ALL UP ON FRIDAY
09:14AM 9 OR SHOULD WE PICK THE ONES THAT ARE COMPLETED ON THURSDAY ON
09:14AM 10 THURSDAY AND THE ONES ON FRIDAY ON FRIDAY? I ASK. IT'S A
09:14AM 11 LOGISTICS QUESTION. IT'S EASIER TO DO HALF AND HALF THAN ALL
09:14AM 12 OF THEM AT ONCE.

09:14AM 13 THE COURT: I APOLOGIZE, I HAVEN'T GOT THAT
09:14AM 14 GRANULAR.

09:14AM 15 MR. DOWNEY: YES.

09:14AM 16 THE COURT: BUT I THINK WHATEVER IS EASIEST FOR YOU.
09:14AM 17 YOU'RE THE ONES WHO ARE DOING THAT WORK, SO MAYBE IT MAKES
09:14AM 18 SENSE TO PICK UP THURSDAY'S WORK AND GET THAT DONE AND THEN DO
09:14AM 19 FRIDAY'S.

09:14AM 20 MR. BOSTIC, DO YOU HAVE A THOUGHT ABOUT THAT?

09:14AM 21 MR. BOSTIC: YOUR HONOR, I THINK EITHER IS FINE.
09:14AM 22 PERHAPS THE PARTIES CAN MEET AND CONFER ON THAT AND THEN
09:14AM 23 COORDINATE WITH MS. KRATZMANN REGARDING THE BEST WAY TO HANDLE
09:14AM 24 THAT.

09:14AM 25 MR. DOWNEY: YES, WE'LL TALK TO MS. KRATZMANN.

09:14AM 1 THE COURT: OKAY. GREAT.

09:14AM 2 SHOULD WE MOVE TO 2, JURY SELECTION, UNLESS THERE'S
09:14AM 3 ANYTHING FURTHER ON THE QUESTIONNAIRE?

09:14AM 4 LET'S DO THAT THEN. WE TALKED ABOUT, AND AS YOU RECALL, I
09:15AM 5 HAD INDICATED THAT YOU'LL HAVE THE QUESTIONNAIRES. AND YOU'LL
09:15AM 6 HAVE THE BENEFITS OF THE QUESTIONNAIRES, THE COMPLETED
09:15AM 7 QUESTIONNAIRES, IN THAT WEEK INTERIM IS TO ALLOW COUNSEL TO
09:15AM 8 REVIEW IT AND MEET AND CONFER AND SEE IF YOU CAN REACH
09:15AM 9 AGREEMENT AS TO ANY CHALLENGES TO THE PANEL, AND I'LL BE HAPPY
09:15AM 10 TO RECEIVE THOSE AND LOOK AT THOSE WITH YOU.

09:15AM 11 I THINK YOUR POINT TWO SUGGESTS THE TIME TO MEET FOR THAT,
09:15AM 12 AND I'M OPEN TO WHATEVER YOU THINK YOU NEED THAT FOLLOWING
09:15AM 13 WEEK, AND WE CAN SCHEDULE SOMETHING FOR YOU. AND THEN IF
09:15AM 14 YOU'LL LET MS. KRATZMANN KNOW, AND WE'LL DO THAT.

09:15AM 15 AS YOU MAKE YOUR SELECTIONS, I JUST HAVE TO REMIND YOU TO,
09:15AM 16 AS I WILL, I WILL KEEP IN MIND ANY BATSON ISSUES AND YOU
09:15AM 17 SHOULD, TOO. YOU'RE BOTH OBLIGATED TO BE CONSCIOUS OF THAT,
09:15AM 18 AND I WILL, TOO, AS I LOOK AT THE STRIKES AND SEE WHAT WE REACH
09:16AM 19 IN OUR DISCUSSION.

09:16AM 20 BUT THAT'S ALL. ARE YOU STILL IN AGREEMENT TO DO THAT?

09:16AM 21 MR. SCHENK: YES, YOUR HONOR. I THINK IT MAKES
09:16AM 22 SENSE TO HAVE THE PARTIES MEET AND CONFER WITH REGARD TO ANY
09:16AM 23 AGREED UPON CHALLENGES.

09:16AM 24 WOULD THE COURT LIKE US TO E-MAIL THE COURT A LIST OF
09:16AM 25 JUROR NUMBERS OR JUROR NAMES THAT WE'VE REACHED AGREEMENT ON?

09:16AM 1 WOULD THAT BE HELPFUL?

09:16AM 2 THE COURT: IT WOULD BE VERY HELPFUL. IF YOU COULD
09:16AM 3 DO THAT, THEN I'LL REVIEW -- I'LL GO THROUGH THE QUESTIONNAIRES
09:16AM 4 THAT I HAVE FOR ANY ISSUES, AND THEN WE CAN MAYBE SCHEDULE A
09:16AM 5 FORMAL TIME, WE CAN GO ON THE RECORD TO MEMORIALIZE THOSE.

09:16AM 6 SO IF I CAN GET THOSE IN ADVANCE, THAT WOULD BE HELPFUL.

09:16AM 7 MR. DOWNEY: THAT'S FINE, YOUR HONOR.

09:16AM 8 THE COURT: NUMBER 3 IS THE NEUTRAL STATEMENT. I
09:16AM 9 THINK YOU'VE AGREED THAT THE QUESTIONNAIRE'S SUMMARY CAN BE
09:16AM 10 USED FOR THE NEUTRAL STATEMENT.

09:16AM 11 MR. DOWNEY: THAT'S CORRECT, YOUR HONOR.

09:16AM 12 MR. SCHENK: YES.

09:16AM 13 THE COURT: AND I WILL DO THAT.

09:16AM 14 THE QUESTION OF ALTERNATES, WE HAVE FOUR NOW. AND SHOULD
09:17AM 15 WE INCREASE THAT TO FIVE?

09:17AM 16 MR. SCHENK: YES, WE SHOULD.

09:17AM 17 THE COURT: I WAS DOING SOME FURNITURE REARRANGING
09:17AM 18 IN OUR COURTROOM HERE AS YOU PROBABLY CAN SEE, AND TRYING TO
09:17AM 19 FIGURE OUT HOW WE CAN ARRANGE FOR OUR JURORS TO KEEP OUR
09:17AM 20 SEATING AS IT IS IN OUR JURY BOX.

09:17AM 21 LET ME JUST SAY, I AM INCLINED TO HAVE TO USE THE SEATS IN
09:17AM 22 OUR JURY BOX AND NOT SKIP SPACES NOW. WE'LL, OF COURSE,
09:17AM 23 INQUIRE ABOUT JUROR'S COMFORT LEVEL IN THAT. I GUESS IT'S
09:17AM 24 DEPENDENT ALSO ON CERTAIN HEALTH QUESTIONS THAT WE'LL GET
09:17AM 25 ANSWERS TO FROM THE QUESTIONNAIRE.

09:17AM 1 BUT THAT'S HOW I WOULD LIKE TO START. YOU SEE THERE'S A
09:17AM 2 COUPLE OF SEATS OUTSIDE OF THE BOXES THAT WE MIGHT USE IF WE
09:17AM 3 NEED TO.

09:17AM 4 LET ME INDICATE, IF WE NEED TO EXPAND FOR WHATEVER REASON
09:18AM 5 OUTSIDE OF THE JURY BOX, OUTSIDE OF THE WELL, MY THOUGHT IS
09:18AM 6 THAT WE WOULD USE THE ROW THAT IS ON THE SAME SIDE OF THE JURY
09:18AM 7 BOX BUT OUTSIDE OF THE RAIL, THAT FIRST ROW, WHERE I THINK
09:18AM 8 THERE ARE TWO PEOPLE SEATED NOW.

09:18AM 9 MY SENSE IS THAT WE COULD POPULATE THAT ROW WITH ANY
09:18AM 10 ADDITIONAL JURORS. AND IT WOULD BE MY INTENT TO KEEP THE ROW
09:18AM 11 BEHIND THAT OPEN AND VACANT SUCH THAT THE PUBLIC IS NOT SEATED
09:18AM 12 DIRECTLY MIND THE JURORS TO AFFORD SOME SEPARATION, IF YOU
09:18AM 13 WILL.

09:18AM 14 THAT'S MY INTENT IF WE GO -- IF WE HAVE TO EXPAND OUTSIDE
09:18AM 15 OF THE WELL. I THINK WE CAN ACCOMPLISH IT THAT WAY.

09:18AM 16 MR. DOWNEY: I GATHER, YOUR HONOR. WE CAN THINK
09:18AM 17 ABOUT THAT WHEN IT'S RIPE. I -- YOU KNOW, I UNDERSTAND WHY THE
09:18AM 18 COURT WOULD DO THAT. I DON'T KNOW WHAT CONCERNS IT WOULD
09:18AM 19 PRESENT IN TERMS OF VISIBILITY AND SO FORTH, SO WE'LL TAKE A
09:18AM 20 LOOK AT IT WHEN THE ISSUE IS RIPE, AND IF WE HAVE A CONCERN,
09:18AM 21 WE'LL RAISE IT THEN.

09:18AM 22 THE COURT: SURE. OKAY.

09:18AM 23 I'M JUST TRYING TO GIVE YOU AS MUCH INFORMATION AS I CAN
09:19AM 24 FOR YOUR THOUGHTS.

09:19AM 25 ALL RIGHT. SO ALTERNATES, SHALL WE SAY FIVE?

09:19AM 1 MR. SCHENK: THANK YOU, YOUR HONOR. YES.

09:19AM 2 MR. DOWNEY: IT'S UP TO YOUR HONOR.

09:19AM 3 THE COURT: ALL RIGHT. LET'S HAVE FIVE ALTERNATES,
09:19AM 4 MADAM CLERK.

09:19AM 5 THE CLERK: YES, YOUR HONOR.

09:19AM 6 THE COURT: I THINK I WAS AHEAD OF MYSELF ON 5, THE
09:19AM 7 COURTROOM PROCEDURES, AS I WAS TALKING TO YOU ABOUT THE LAYOUT
09:19AM 8 OF WHAT WE MIGHT DO. I ALSO WANT YOU TO THINK ABOUT PROTOCOLS
09:19AM 9 SHOULD WE NEED TO ENGAGE SOMETHING BECAUSE OF THE HEALTH
09:19AM 10 SITUATION, AND, OF COURSE, WE CAN'T PREDICT THAT.

09:19AM 11 IF WE NEED TO TAKE A RECESS, IF WE NEED TO ASK INDIVIDUALS
09:19AM 12 TO TEST, WE'LL DO THAT.

09:19AM 13 I DID SOME INVESTIGATION ABOUT PURCHASING SOME BULK
09:19AM 14 TESTING, AND I WAS TOLD THAT THEY MIGHT BE AVAILABLE IN A COST
09:19AM 15 EFFECT ACTIVE MANNER. I HAVEN'T FOUND THE COST EFFECTIVE
09:20AM 16 SOLUTION YET, BUT WE'LL SEE, AND WE'LL KEEP ALL OF OUR OPTIONS
09:20AM 17 OPEN.

09:20AM 18 MR. DOWNEY: YOUR HONOR, ON THAT WE'VE BEEN THINKING
09:20AM 19 ALONG THE SAME LINES, MAYBE ENCOUNTERING SOME OF THE SAME
09:20AM 20 BARRIERS AS YOUR HONOR.

09:20AM 21 BUT I DO THINK IT MIGHT BE POSSIBLE, AND WE CAN INFORMALLY
09:20AM 22 MAKE A SUGGESTION AS TO THAT AND CONSULT WITH THE GOVERNMENT
09:20AM 23 BEFORE WE DO SO.

09:20AM 24 THE COURT: OKAY. I WAS INFORMED SOME TIME AGO THAT
09:20AM 25 BULK QUICK TESTS, I DON'T KNOW WHAT THEY'RE CALLED, THEY'RE

09:20AM 1 AVAILABLE IN CERTAIN COUNTRIES, IN EUROPE THEY'RE USING THESE,
09:20AM 2 AND I WAS INFORMED THAT THEY WERE SOMEWHAT AFFORDABLE. I
09:20AM 3 LOOKED, AND I DIDN'T SEE ANY THAT LOOKED LIKE THEY WERE
09:20AM 4 AFFORDABLE.

09:20AM 5 I'M NOT CERTAIN THE COURT'S BUDGET WOULD DO THAT, BUT I
09:20AM 6 WAS THINKING OF JUST PURCHASING THOSE FOR OUR USE, BUT WE'LL
09:20AM 7 KEEP LOOKING AND SEE.

09:20AM 8 NUMBER 6 IS COURTROOM TECHNOLOGY AND WALKTHROUGH. I THINK
09:20AM 9 YOU'RE GOING TO SCHEDULE YOUR TIME WITH MS. KRATZMANN AND OUR
09:21AM 10 STAFF ABOUT THAT.

09:21AM 11 MR. SCHENK: I'M SORRY, YOUR HONOR. THIS MIGHT FIT
09:21AM 12 UNDER 5.

09:21AM 13 DOES THE COURT HAVE -- HAS IT REACHED A CONCLUSION ABOUT
09:21AM 14 KEEPING THE PLASTIC UP OR -- I'M ALSO CURIOUS, I KNOW THAT THE
09:21AM 15 COURT MENTIONED SOME JURORS SITTING IN THE FIRST ROW.

09:21AM 16 WILL THE REST OF THE GALLERY HAVE SEATING LIMITS ON IT OR
09:21AM 17 IS IT FIRST COME FIRST SERVE? I HAVEN'T --

09:21AM 18 THE COURT: OH, YES. WELL, AS TO THAT IT IS FIRST
09:21AM 19 COME, FIRST SERVE, AND WE WILL HAVE AN OVERFLOW ROOM THAT IS
09:21AM 20 BEING MADE AVAILABLE HERE. I THINK IT'S ON THE FOURTH FLOOR IF
09:21AM 21 I'M NOT MISTAKEN. I'LL HAVE TO CONFIRM THAT. BUT IT'S ON OUR
09:21AM 22 WEBSITE I BELIEVE.

09:21AM 23 MR. SCHENK: UH-HUH.

09:21AM 24 THE COURT: AND SO FAR THE OVERFLOW ROOM WILL BE SET
09:21AM 25 UP FOR AUDIO ONLY. IT WILL HAVE A COMPONENT THAT IF EXHIBITS

09:21AM 1 ARE DISPLAYED IN COURT ON OUR SCREENS, THAT OVERFLOW ROOM WILL
09:22AM 2 BE ABLE TO CAPTURE THOSE EXHIBITS AS WELL FOR ANY MEMBER OF THE
09:22AM 3 PUBLIC WHO IS PRESENT THERE.

09:22AM 4 SO THAT WILL EXIST, AN OVERFLOW ROOM WILL EXIST HERE.

09:22AM 5 WE'LL, OF COURSE, BE OPEN TO THE PUBLIC HERE AND FOR
09:22AM 6 SEATING HERE AS NEEDED, BUT IT IS FIRST COME FIRST SERVE HERE.

09:22AM 7 WE'LL TRY TO -- I KNOW THAT I'M INFORMED FROM OUR
09:22AM 8 SAN FRANCISCO MEDIA INDIVIDUAL THAT THE PRESS HAS ASKED IF
09:22AM 9 THERE'S AN AREA FOR THE PRESS AND WE'RE -- WE CAN'T RESERVE
09:22AM 10 SEATS, BUT WE'LL INDICATE SOME FOR THE PRESS.

09:22AM 11 AS I SAID, WE HAVE THE OVERFLOW ROOM, WHICH RAISES ANOTHER
09:22AM 12 QUESTION WHICH IS ON MY LIST A LITTLE DEEPER BUT NOW IS THE
09:22AM 13 TIME TO ASK. WHAT ARE THE PARTIES' THOUGHTS OF HAVING A CAMERA
09:22AM 14 IN THIS ROOM THAT WOULD DISCRETE -- I THINK IT'S ONE OF THESE
09:23AM 15 CAMERAS FOR COMPUTERS, SMALL THINGS -- THAT WOULD DISPLAY THE
09:23AM 16 PROCEEDINGS AS IF SOMEONE WERE SEATED IN THE AUDIENCE FORWARD,
09:23AM 17 IF YOU WILL, ONLY TO THE COURTHOUSE? IT WOULD NOT BE LIVE
09:23AM 18 STREAMED, YOUTUBE OR ANY OF THAT. IT WOULD ONLY BE DISPLAYED
09:23AM 19 IN THE COURTROOM IN THE OVERFLOW ROOM.

09:23AM 20 WE MAY BE ABLE TO DO THAT. I'VE BEEN TALKING TO OUR I.T.
09:23AM 21 PEOPLE ABOUT THAT AND SUCH THAT THE PUBLIC IN THE OVERFLOW ROOM
09:23AM 22 WOULD HAVE A VIEW OF THE PROCEEDINGS, AND, AGAIN, IT WOULD BE A
09:23AM 23 DISCRETE VIEW, AND I WOULD WORK WITH I.T. AND WITH YOUR
09:23AM 24 AGREEMENT WOULD GET THE FIELD OF VIEW, IF YOU WILL, OF THAT
09:23AM 25 CAMERA.

09:23AM 1 I WAS GOING TO ASK YOUR THOUGHTS ABOUT THAT. I DON'T KNOW
09:23AM 2 IF YOU'RE PREPARED TO TALK ABOUT THAT NOW OR IF YOU WANT TO
09:23AM 3 THINK ABOUT IT.

09:23AM 4 MR. DOWNEY: YOUR HONOR, FROM THE DEFENSE'S
09:23AM 5 PERSPECTIVE, I DON'T HAVE AN OBJECTION TO IT IN PRINCIPLE, BUT
09:23AM 6 MAYBE WE CAN LOOK AT BOTH THE VIEW IT CONVEYS AND WHERE THE
09:24AM 7 EQUIPMENT SITS IN THIS COURTROOM WHEN WE DO OUR WALKTHROUGH.

09:24AM 8 THE COURT: SURE.

09:24AM 9 MR. DOWNEY: AND THAT MIGHT BE A GOOD WAY TO WORK
09:24AM 10 THROUGH IT.

09:24AM 11 THE COURT: OKAY.

09:24AM 12 MR. SCHENK: NO OBJECTION FROM THE GOVERNMENT. I
09:24AM 13 RECALL JUDGE HENDERSON DID THAT IN A TRIAL IN SAN FRANCISCO.

09:24AM 14 THE COURT: SURE. I'LL CONTACT OUR I.T. AND JUST
09:24AM 15 SEE WHAT THAT IS AND WHERE IT IS.

09:24AM 16 AGAIN, IT WOULD NOT BE FOR BROADCAST ON ANY PUBLIC
09:24AM 17 CHANNEL. WE'RE NOT PERMITTED TO DO THAT.

09:24AM 18 THIS WOULD BE AN INTRA COURT. SO IT WOULD BE IN OUR
09:24AM 19 COURTROOM DOWNSTAIRS ONLY AND PEOPLE WOULD COME IN AND VIEW IT
09:24AM 20 THERE.

09:24AM 21 ALL RIGHT. WE'LL LOOK INTO THAT.

09:24AM 22 MR. DOWNEY: YOUR HONOR, WITH THE SEATING
09:24AM 23 LIMITATIONS, I ANTICIPATE THAT SOME MEMBERS OF MS. HOLMES'S
09:24AM 24 FAMILY AND FRIENDS WILL WANT TO ATTEND AND BE WITH MS. HOLMES
09:24AM 25 DURING THE TRIAL.

09:24AM 1 COULD WE RESERVE A CERTAIN NUMBER OF SEATS FOR THAT
09:24AM 2 PURPOSE?

09:24AM 3 THE COURT: DO YOU HAVE ANY IDEA OF THE NUMBER?

09:24AM 4 MR. DOWNEY: I THINK SOMEWHERE IN THE NEIGHBORHOOD
09:24AM 5 AS THREE, AND MAYBE AS MANY, DEPENDING ON HOW IT WORKS OUT,
09:25AM 6 MAYBE MORE ON SOME DAYS, BUT IF WE COULD RESERVE THREE AND KNOW
09:25AM 7 THAT THOSE WERE AVAILABLE, WE WOULD APPRECIATE THAT ABILITY.

09:25AM 8 THE COURT: I ANTICIPATE AS FAR AS LOCATION YOU
09:25AM 9 WOULD WANT THEM RIGHT BEHIND YOU OR DO YOU HAVE A --

09:25AM 10 MR. DOWNEY: YES.

09:25AM 11 MR. SCHENK: YOUR HONOR, I WOULD MAKE THE SAME
09:25AM 12 REQUEST FOR THE GOVERNMENT FOR SOME AGENTS. THAT'S WHAT I WAS
09:25AM 13 CURIOUS ABOUT WHEN I WAS ASKING ABOUT THE NUMBER OF SEATS
09:25AM 14 AVAILABLE IN THE COURTROOM. I DON'T HAVE A NUMBER RIGHT NOW
09:25AM 15 FOR THE COURT. IF I COULD GET BACK TO YOU ON THAT.

09:25AM 16 THE COURT: OKAY. WELL, WE'LL SEE WHAT WE CAN DO.
09:25AM 17 I UNDERSTAND THE REQUEST FOR THAT, AND I THINK WE CAN
09:25AM 18 ACCOMMODATE THOSE THINGS.

09:25AM 19 MR. SCHENK: OKAY.

09:26AM 20 MR. DOWNEY: THANK YOU.

09:26AM 21 THE COURT: ALL RIGHT. I'M ON NUMBER 7, FACTUAL
09:26AM 22 STIPULATIONS. AND IT SEEMS LIKE YOU'RE STILL IN MEET AND
09:26AM 23 CONFERS ON THOSE, AND YOU'LL NOTIFY THE COURT WITH ANY RESULT?

09:26AM 24 MR. DOWNEY: THAT'S CORRECT, YOUR HONOR.

09:26AM 25 THE COURT: ALL RIGHT. NUMBER 8 IS WITNESS AND

09:26AM 1 EXHIBITS. WHERE ARE WE IN THIS CATEGORY?

09:26AM 2 MR. BOSTIC.

09:26AM 3 MR. BOSTIC: YOUR HONOR, THE PARTIES HAVE RECENTLY
09:26AM 4 EXCHANGED UPDATED EXHIBIT LISTS. AND THE PARTIES HAVE ALSO
09:26AM 5 BEEN DISCUSSING MECHANICS FOR DISCLOSURE OF WITNESSES AT TRIAL,
09:26AM 6 AND AS DESCRIBED IN THE JOINT SUBMISSION, THERE'S A DISPUTE ON
09:26AM 7 THOSE POINTS.

09:26AM 8 I CAN ADDRESS THAT NOW, YOUR HONOR.

09:26AM 9 THE COURT: SURE. I THINK THAT'S 8A AND B.

09:26AM 10 MR. BOSTIC: YES. FIRST, THE PARTIES ARE DISCUSSING
09:26AM 11 FOR THE GOVERNMENT'S CASE THE POSSIBILITY OF THE GOVERNMENT
09:27AM 12 DISCLOSING IN SEGMENTS WHAT WITNESSES IT EXPECTS TO CALL.

09:27AM 13 THE GOVERNMENT HAS OFFERED TO DISCLOSE TO THE DEFENSE THE
09:27AM 14 LIST OF LIKELY WITNESSES IN TWO SEGMENTS FOR THE FIRST HALF OF
09:27AM 15 THE TRIAL AND THEN FOR THE SECOND. I BELIEVE THE DATES
09:27AM 16 PROPOSED BY THE GOVERNMENT WERE AUGUST 24TH FOR DISCLOSING THE
09:27AM 17 WITNESSES THAT IT EXPECTS TO CALL IN THE FIRST HALF OF ITS
09:27AM 18 TRIAL, AND THEN FOLLOWING UP AROUND SEPTEMBER 21ST REGARDING
09:27AM 19 WITNESSES THAT IT EXPECTS TO CALL IN THE SECOND HALF OF THIS
09:27AM 20 TRIAL OR IN THE SECOND HALF OF ITS CASE.

09:27AM 21 THE GOVERNMENT BELIEVES THAT WILL PROVIDE SUFFICIENT
09:27AM 22 NOTICE TO THE DEFENSE, ADDRESS THE DEFENSE'S CONCERNS ABOUT THE
09:27AM 23 SIZE OF THE GOVERNMENT'S OVERALL WITNESS LIST, SOMETHING THAT
09:27AM 24 THE COURT MENTIONED EARLIER. SO THAT WOULD BE OUR PROPOSAL
09:27AM 25 THERE.

09:27AM 1 THE DEFENSE, I BELIEVE, WOULD LIKE EARLIER NOTICE AND
09:27AM 2 WOULD LIKE NOTICE IN QUARTERS INSTEAD OF IN HALVES. WE THINK
09:27AM 3 THAT THE DISCLOSURE IN HALVES IS SUFFICIENT FOR THIS PURPOSE.

09:28AM 4 I CAN ALSO ADDRESS THE WEEKLY DISCLOSURE IF THE COURT
09:28AM 5 WOULD LIKE.

09:28AM 6 THE COURT: SURE. DO WE HAVE -- IS THERE A
09:28AM 7 DISAGREEMENT ABOUT IS IT THURSDAY EVENING OR FRIDAY MORNING?

09:28AM 8 MR. BOSTIC: THE PARTIES ARE ONE DAY APART, YOUR
09:28AM 9 HONOR, THAT'S CORRECT.

09:28AM 10 AS THE COURT KNOWS, THIS KIND OF NOTICE IS NOT REQUIRED BY
09:28AM 11 THE RULES. IN PAST TRIALS I'VE HAD EXPERIENCE WITH THE
09:28AM 12 GOVERNMENT PROVIDING NOTICE OF WITNESSES THE EVENING BEFORE OF
09:28AM 13 WHO IS GOING TO BE CALLED THE FOLLOWING DAY.

09:28AM 14 IN THIS CASE WE ARE WILLING TO PROVIDE A WEEK'S WORTH OF
09:28AM 15 NOTICE FOR WITNESSES -- EXCUSE ME, NOTICE REGARDING A WEEK'S
09:28AM 16 WORTH OF WITNESSES THE FRIDAY BEFORE A GIVEN TRIAL WEEK. THAT
09:28AM 17 WOULD GIVE THE DEFENSE THREE FULL DAYS OF NOTICE AS TO
09:28AM 18 DEFENDANTS WHO ARE -- EXCUSE ME, WITNESSES WHO ARE GOING TO BE
09:28AM 19 CALLED ON THE TUESDAY, WEDNESDAY, AND FRIDAY OF THE FOLLOWING
09:28AM 20 WEEK.

09:28AM 21 WE RESPECTFULLY SUBMIT THAT NOTICE ON THURSDAY IS SOONER
09:28AM 22 THAN IS NECESSARY AND WOULD MAKE THAT JOB MORE COMPLICATED
09:28AM 23 GIVEN THAT FRIDAY IS A TRIAL DAY AND PLANS FOR THE FOLLOWING
09:28AM 24 WEEK MIGHT CHANGE ON A FRIDAY BASED ON THE EVOLVING NEEDS OF
09:29AM 25 THE CASE OR WITNESS SCHEDULES.

09:29AM 1 THE COURT: IS IT COMPLICATED TO DO IT THE MIDDLE OF
09:29AM 2 THE DAY ON FRIDAY?

09:29AM 3 MR. BOSTIC: ONLY COMPLICATED IN THAT WE'LL BE IN
09:29AM 4 THE MIDST OF TRIAL, YOUR HONOR. SO WE WOULD LIKE CLOSE OF
09:29AM 5 BUSINESS ON FRIDAY AS THE DEADLINE, BUT, OF COURSE, WE'LL ABIDE
09:29AM 6 BY ANYTHING THE COURT SAYS.

09:29AM 7 MR. DOWNEY: YOUR HONOR, THIS IS AN EFFICIENCY
09:29AM 8 MECHANISM FOR THE COURT AND THE JURY. OUR HOPE WAS THAT WE
09:29AM 9 WOULD PRESENT LEGAL ISSUES THAT HAD TO BE RESOLVED MONDAY
09:29AM 10 MORNING, IF ANY, YOU KNOW, THINGS THAT COULD DELAY COURT IN OUR
09:29AM 11 ANTICIPATION FOR THE WEEK.

09:29AM 12 I WILL JUST SAY DIRECTLY AND IN GOOD FAITH TO THE COURT,
09:29AM 13 IF WE DON'T KNOW UNTIL FRIDAY, WE'RE LOOKING AT THOSE ISSUES
09:29AM 14 MORE LIKELY TUMBLING INTO BEING RAISED LATE MONDAY NIGHT OR
09:29AM 15 TUESDAY MORNING OR AS THE WITNESSES ARE TESTIFYING. THE COURT
09:29AM 16 WELL KNOWS WHAT THAT DOES TO THE PACE OF A TRIAL.

09:29AM 17 SO FROM OUR PERSPECTIVE WE'RE NOT ANY BETTER OFF
09:29AM 18 TACTICALLY IF WE KNOW THURSDAY NIGHT OR FRIDAY. SO FROM THAT
09:30AM 19 PERSPECTIVE IT DOESN'T MATTER.

09:30AM 20 THE PERSPECTIVE IT MATTERS FROM AND WHY I PROPOSED IT AND
09:30AM 21 WHAT HAS WORKED IN OTHER CASES IS WE RAISE THE LEGAL ISSUES AT
09:30AM 22 THE BEGINNING OF THE WEEK, THE GOVERNMENT HAS A CHANCE TO
09:30AM 23 RESPOND, AND THE COURT HAS A CHANCE TO CONSIDER IT, AND THE
09:30AM 24 PACE OF TRIAL IS NOT SLOWED.

09:30AM 25 AND IF THE DISCLOSURE IS FRIDAY, I CAN'T GUARANTEE THAT.

09:30AM 1 THAT'S JUST THE REALITY OF THE SITUATION.

09:30AM 2 THE COURT: WELL, I UNDERSTAND THAT. I WANT TO
09:30AM 3 RESPECT, AND I KNOW YOU ALL DO, TOO, THE EFFICIENT FLOW OF THE
09:30AM 4 TRIAL.

09:30AM 5 LET ME JUST SAY IN ADVANCE THAT WHAT SLOWS THE EFFICIENCY
09:30AM 6 OF TRIAL SOMETIMES IS GETTING A MOTION AT 5:30 IN THE MORNING
09:30AM 7 ON MONDAY MORNING TO BE DISCUSSED ON AT 8:30 MONDAY MORNING.

09:30AM 8 MR. DOWNEY: IF MONDAY IS A TRIAL DAY. IF MONDAY IS
09:30AM 9 NOT A TRIAL DAY, THEN YOU GET THAT SAME MOTION MONDAY MORNING,
09:30AM 10 THEN THINGS WORK MORE SMOOTHLY. SO WE HAD PROPOSED THAT.

09:30AM 11 THE COURT: IT CAN. BUT WHEN ONE HAS A CALENDAR AT
09:30AM 12 1:30 ON A MONDAY.

09:30AM 13 MR. DOWNEY: YOUR HONOR, THERE'S NO QUESTION. BUT I
09:31AM 14 THINK THERE'S A NUMBER OF ISSUES THAT ARE RESERVED FOR MOTIONS
09:31AM 15 IN LIMINE. IT'S A COME CONTEMPLATED TRIAL. THERE ARE GOING TO
09:31AM 16 BE THOSE TYPES OF ISSUES.

09:31AM 17 THE COURT: I APPRECIATE THAT. IT JUST SEEMS -- I
09:31AM 18 THINK WE TALKED ABOUT THIS SOME MONTHS AGO.

09:31AM 19 AND I UNDERSTAND, MR. BOSTIC, YOUR DESIRE TO WAIT UNTIL
09:31AM 20 FRIDAY CLOSE OF BUSINESS, YOU CAN ASSESS THE WEEK'S WORK THAT
09:31AM 21 HAS BEEN DONE, AND THEN YOU CAN BETTER ASSESS WHAT CHANGES, IF
09:31AM 22 ANY, YOU NEED TO MAKE IN YOUR STRATEGY.

09:31AM 23 I CAN INDICATE THAT THE GOVERNMENT SHOULD SUPPLY THIS BY
09:31AM 24 THURSDAY BY 7:00 P.M., NO LATER THAN 7:00 P.M., BUT WITH THE
09:31AM 25 RESERVATION AND CAVEAT THAT IF THE GOVERNMENT DESIRES TO CHANGE

09:31AM 1 THE ORDER OR ADD SOMETHING, THEY CAN CERTAINLY PROVIDE THAT
09:31AM 2 INFORMATION, AND I WOULD CERTAINLY LISTEN TO ANY REASON WHY
09:31AM 3 THAT DECISION CAN BE MADE OR WHY THAT WITNESS IS GOING TO BE
09:32AM 4 CALLED AND WAS NOT YET IDENTIFIED, AND I'M CERTAIN THERE WILL
09:32AM 5 BE GOOD REASONS FOR THAT IF THAT COMES UP. THAT'S ON BOTH
09:32AM 6 SIDES, TOO.

09:32AM 7 MR. DOWNEY: THAT CAVEAT IS FINE WITH US,
09:32AM 8 YOUR HONOR.

09:32AM 9 MR. BOSTIC: UNDERSTOOD, YOUR HONOR. THANK YOU.

09:32AM 10 ON THE TOPIC OF THE ANTICIPATED LITIGATION DURING TRIAL,
09:32AM 11 THIS MAY BE A DISCUSSION FOR ANOTHER DAY, BUT I WONDER IF IT
09:32AM 12 WOULD BE POSSIBLE TO SET UP SOME KINDS OF PROCEDURES OR
09:32AM 13 UNDERSTANDINGS ABOUT NOTICE FOR THOSE MOTIONS AND THE TIMING OF
09:32AM 14 THOSE MOTIONS.

09:32AM 15 I HEAR MR. DOWNEY SAYING THAT THE DEFENSE MAY BE FILING
09:32AM 16 MOTIONS ON MONDAY MORNINGS. I KNOW THAT THE COURT OBVIOUSLY
09:32AM 17 WILL HAVE A LOT TO DO. THE GOVERNMENT WILL HAVE A LOT TO DO.

09:32AM 18 IF WE CAN HAVE NOTICE OF THOSE MOTIONS IN ADVANCE, IF
09:32AM 19 THERE COULD BE SOME UNDERSTANDING ABOUT THE TIME SCALE IN WHICH
09:32AM 20 THE GOVERNMENT IS EXPECTED TO RESPOND, THAT MIGHT BENEFIT THE
09:32AM 21 EFFICIENT PROCESS OF TRIAL ALSO.

09:32AM 22 MR. DOWNEY: I THINK THAT SOME ARRANGEMENT THAT
09:32AM 23 GIVES HIM TIME TO RESPOND IS FINE BY ME. I DON'T KNOW WHAT
09:33AM 24 EXACTLY HE'S PROPOSING, BUT IF HE WANTS TO RESPOND AND TO MANY
09:33AM 25 OF -- MANY OF THE MOTIONS HE MAY NOT NEED TO RESPOND TO. WE'RE

09:33AM 1 UNDER A GREATER BURDEN TO IDENTIFY POTENTIALLY PREJUDICIAL
09:33AM 2 ISSUES, AND HE MAY BE SATISFIED TO ANSWER THEM ORALLY.

09:33AM 3 SO I DON'T KNOW WITH A TRIAL MOVING WHERE WE ONLY KNOW OF
09:33AM 4 WITNESSES A FEW DAYS IN ADVANCE WHAT SCHEDULE WOULD ACCOMMODATE
09:33AM 5 HIS CONCERN, BUT WE CERTAINLY ARE OPEN TO ONE THAT DOES.

09:33AM 6 OUR GOAL IS TO HAVE BOTH SIDES HAVE A CHANCE TO ADDRESS
09:33AM 7 THE ISSUE AND FOR THAT TO BE SOMETHING THAT THE COURT CAN
09:33AM 8 CONSIDER EFFICIENTLY.

09:33AM 9 MR. BOSTIC: I'LL JUST BE FRANK, YOUR HONOR. PART
09:33AM 10 OF MY CONCERN IN HEARING ABOUT THIS SCHEDULE IS WHAT WE'RE SET
09:33AM 11 UP FOR NOW IS THAT THE DEFENSE FINDS OUT ABOUT A SET OF
09:33AM 12 WITNESSES ON A THURSDAY EVENING AND THEY HAVE FRIDAY, SATURDAY,
09:33AM 13 SUNDAY TO PREPARE WHATEVER MOTIONS THEY WANT TO PREPARE. AND
09:33AM 14 I'M NOT SURE HOW MUCH TIME THAT LEAVES REALISTICALLY FOR THE
09:33AM 15 GOVERNMENT TO RESPOND TO WHATEVER THEY FILE MONDAY MORNING.

09:33AM 16 SO I WANT TO BE SURE THAT WE'RE SET UP TO PROVIDE THE
09:34AM 17 COURT WITH A USEFUL AND HELPFUL RESPONSE TO ANY CONCERN RAISED
09:34AM 18 BY THE DEFENSE.

09:34AM 19 THE COURT: MR. DOWNEY, SHOULD WE SET A SCHEDULE FOR
09:34AM 20 YOU TO FILE ANY MOTIONS IF NEEDED?

09:34AM 21 MR. DOWNEY: WHAT I MIGHT SUGGEST TO YOUR HONOR IS
09:34AM 22 I'LL COMMIT NOW THAT WE'LL FILE IT AT LATEST BY 8:00 O'CLOCK
09:34AM 23 MONDAY MORNING.

09:34AM 24 LET ME MAKE A PROPOSAL. I THINK WE WILL TRY -- IF ISSUES
09:34AM 25 AFFECT, YOU KNOW, WITNESSES FOR LATER IN THE WEEK, WE'LL BE

09:34AM 1 FILING IT 8:00 O'CLOCK MONDAY MORNING, AND IF IT'S A FRIDAY
09:34AM 2 WITNESS, YOUR HONOR WILL HAVE THE ABILITY TO CONSIDER THAT OR A
09:34AM 3 WEDNESDAY WITNESS AND SET SOME TYPE OF SCHEDULE.

09:34AM 4 I THINK IF IT'S FOR A TUESDAY WITNESS, WE'RE HAPPY TO GIVE
09:34AM 5 THEM NOTICE OF WHAT THE ISSUE IS FROM OUR PERSPECTIVE. AND,
09:34AM 6 YOU KNOW, THIS IS WHAT WE'D BE WILLING TO DO THAT BY, SAY,
09:34AM 7 SATURDAY NIGHT. AND THEN THEY CAN HAVE THE ABILITY TO THINK
09:34AM 8 ABOUT WHETHER THEY WANT TO FILE A RESPONSE, AND FILE A RESPONSE
09:34AM 9 TO OUR PAPERS AFTER THEY SEE THEM, YOU KNOW, BY WHATEVER TIME
09:34AM 10 THEY THINK THEY NEED ON MONDAY.

09:35AM 11 THE COURT: WELL, THANK YOU.

09:35AM 12 BY GIVING YOU THE INFORMATION EARLIER, I THINK THERE'S
09:35AM 13 SOME RECIPROCAL GRATITUDE THAT SHOULD BE PROVIDED AS TO NOTICE.
09:35AM 14 YOU'LL HAVE THE INFORMATION EARLIER. YOU CAN MAKE A DECISION
09:35AM 15 EARLIER SUCH THAT THE GOVERNMENT COULD BE PROVIDED SOME EARLIER
09:35AM 16 NOTICE SUCH THAT THE COURT COULD HAVE EARLY ACCESS TO THE
09:35AM 17 LITIGATION AS TO A WITNESS.

09:35AM 18 MR. DOWNEY: I UNDERSTAND THAT YOUR HONOR.
09:35AM 19 YOUR HONOR, I PROPOSED EXACTLY THE SCHEDULE THAT I THINK WORKS
09:35AM 20 FOR THAT, SO I DON'T -- YOU KNOW, THESE ARE NOT ISSUES THAT ARE
09:35AM 21 GOING TO BE BRIEFS THAT ARE MORE THAN A COUPLE PAGES.
09:35AM 22 TYPICALLY, IN PRIOR EXPERIENCE, THE GOVERNMENT HAS RESPONDED TO
09:35AM 23 THEM ORALLY. YOU KNOW, I DON'T KNOW IF THERE WILL BE A LOT OF
09:35AM 24 ISSUES THAT THEY DON'T ANTICIPATE.

09:35AM 25 I'M HAPPY TO GIVE THEM NOTICE BY SATURDAY OF WHAT THE

09:35AM 1 ISSUES ARE SO THEY CAN PREPARE, BUT I THINK WE'D LIKE TIME TO
09:35AM 2 PULL THE EXHIBITS ON FRIDAY. SOME OF THESE WITNESSES HAVE
09:35AM 3 HUNDREDS OF EXHIBITS ASSOCIATED WITH THEM, GO THROUGH THE
09:36AM 4 EXHIBITS, AND SEE WHAT EVIDENCE IT PRESENTS, AND PREPARE
09:36AM 5 SOMETHING THAT IS COHERENT THAT THE COURT CAN MAKE AN
09:36AM 6 EXPEDITIOUS DECISION ON.

09:36AM 7 MR. BOSTIC: WE'LL TAKE AS MUCH NOTICE AS WE CAN
09:36AM 8 GET, YOUR HONOR. I THINK THAT WOULD BE HELPFUL.

09:36AM 9 THE COURT: WELL, I THINK SATURDAY NOTICE IS
09:36AM 10 SOMETHING THAT IS FINE.

09:36AM 11 AND DO YOU NEED ME TO STATE A TIME ON SATURDAY?

09:36AM 12 MR. DOWNEY: YOUR HONOR, LET ME CONSULT WITH THE
09:36AM 13 TEAM AND SEE IN TERMS OF THE LOGISTICS WHAT MAKES SENSE. WE'LL
09:36AM 14 WORK IT OUT. THIS IS NOT, YOUR HONOR -- THIS IS ABOUT
09:36AM 15 EFFICIENCY AND EXPEDITION. IF IT DOESN'T SERVE EFFICIENCY AND
09:36AM 16 EXPEDITION, THEN IT'S NOT A GOOD IDEA. BUT WE WANT TO BE
09:36AM 17 EFFICIENT AND EXPEDITIOUS, BECAUSE IT'S CERTAINLY NOT FROM THE
09:36AM 18 DEFENSE'S PERSPECTIVE GOOD FOR THE JURY TO COME IN AND BE
09:36AM 19 SITTING HERE WHILE WE DEBATE LEGAL ISSUES.

09:36AM 20 THE COURT: I DON'T WANT TO DO THAT. THANK YOU.

09:36AM 21 MR. DOWNEY: RIGHT.

09:36AM 22 THE COURT: AND WHATEVER WE CAN DO TO AVOID THAT,
09:36AM 23 I'M GRATEFUL.

09:36AM 24 THE TIME THAT YOU NEED TO DO THIS WOULD NOT BE TO NOTIFY
09:37AM 25 THE GOVERNMENT AT 11:59 P.M., THOSE TYPES OF THINGS. THAT'S

09:37AM 1 NOT HELPFUL.

09:37AM 2 MR. DOWNEY: NO, NO. I ANTICIPATE --

09:37AM 3 THE COURT: MR. DOWNEY, I THINK I CAPTURE WHAT
09:37AM 4 YOU'RE DOING.

09:37AM 5 HAVE YOU EVER TRIED A PATENT CASE, MR. DOWNEY?

09:37AM 6 MR. DOWNEY: WHAT'S THAT?

09:37AM 7 THE COURT: HAVE YOU EVER TRIED A PATENT CASE?

09:37AM 8 MR. DOWNEY: YOU KNOW, I HAVEN'T, YOUR HONOR. I'M
09:37AM 9 SURE YOUR HONOR HAS.

09:37AM 10 THE COURT: THE MOTIONS IN PATENT CASES ARE LIKE THE
09:37AM 11 ONES THAT WE'RE DISCUSSING HERE AND SOME OF MY COLLEAGUES HAVE
09:37AM 12 INDICATED THEY WILL NOT ENTERTAIN A MOTION UNLESS IT'S FILED --
09:37AM 13 THEY WON'T HEAR THE MOTION 48 HOURS AFTER IT'S FILED IN A
09:37AM 14 PATENT CASE.

09:37AM 15 MR. DOWNEY: YES.

09:37AM 16 THE COURT: AND I THINK THE REASON IS MANY CASES,
09:37AM 17 REGRETTABLY, THOSE MOTIONS ARE FILED AT 8:00 A.M., 7:30 A.M.
09:37AM 18 AND IT SLOWS THE TRIAL DOWN. WE CAN'T DO THAT IN THIS CASE.

09:37AM 19 MR. DOWNEY: OF COURSE, THERE'S BEEN CIVIL DISCOVERY
09:37AM 20 AND SUCH.

09:37AM 21 THE COURT: YES. EXACTLY. ALL RIGHT. I THINK
09:37AM 22 WE'RE ALL ON THE SAME PAGE.

09:37AM 23 I APPRECIATE BOTH OF YOUR ATTENTION TO NOT DELAY THE TRIAL
09:38AM 24 AND INTERRUPT THE PROCEEDINGS.

09:38AM 25 MR. DOWNEY: AND THEN, YOUR HONOR, AS TO

09:38AM 1 MR. BOSTIC'S PROPOSAL ON DISCLOSURE OF WITNESSES, WILL YOUR
09:38AM 2 DOCKET ORDER EMBODY THAT THEY AT LEAST MAKE THE DISCLOSURE OF
09:38AM 3 THE WITNESSES FOR THE FIRST HALF OF THE CASE ON THE DATE THAT
09:38AM 4 MR. BOSTIC SUGGESTS?

09:38AM 5 THE COURT: WELL, I THINK SO. I THINK MR. BOSTIC
09:38AM 6 SAID HE WOULD DO THAT, AND I'LL HOLD HIM TO THAT.

09:38AM 7 I DON'T KNOW IF YOU NEED TO PARSE THIS OUT IN QUARTERS. I
09:38AM 8 THINK, YOU KNOW, RATHER THAN DO A FOOTBALL APPROACH, LET'S DO A
09:38AM 9 EUROPEAN FOOTBALL APPROACH AND JUST HALF TIME.

09:38AM 10 MR. BOSTIC: UNDERSTOOD, YOUR HONOR.

09:38AM 11 THE COURT: LET'S SEE. DEMONSTRATIVES AND
09:38AM 12 SUMMARIES. DO WE NEED TO DISCUSS ANYTHING THERE?

09:38AM 13 MR. DOWNEY: I DON'T THINK SO, YOUR HONOR.

09:38AM 14 THE COURT: OKAY. NUMBER 9 IS MS. HOLMES'S REQUEST
09:38AM 15 THAT THE GOVERNMENT PRODUCE JENCKS, BRADY, GIGLIO, AND THE
09:39AM 16 OBLIGATION FOR THE GOVERNMENT CONTINUES AND ENDURES THROUGHOUT
09:39AM 17 THE TRIAL.

09:39AM 18 MR. BOSTIC, YOU'RE AWARE OF THAT?

09:39AM 19 MR. BOSTIC: YES, YOUR HONOR, THE GOVERNMENT IS
09:39AM 20 AWARE OF ITS OBLIGATIONS AND WILL CONTINUE COMPLYING WITH THEM.

09:39AM 21 AND THE GOVERNMENT WILL JUST POINT OUT THE DEFENDANT'S
09:39AM 22 RECIPROCAL RESPONSIBILITIES UNDER RULE 26.2. AND OUR
09:39AM 23 UNDERSTANDING IS THAT THE DEFENSE IS AWARE AND WILL COMPLY WITH
09:39AM 24 THAT AS WELL.

09:39AM 25 MR. DOWNEY: YOUR HONOR, WE ARE AWARE OF THOSE

09:39AM 1 OBLIGATIONS.

09:39AM 2 CAN WE GET A REPRESENTATION FROM THE GOVERNMENT JUST ALSO
09:39AM 3 ALL OF THE MATERIAL IN THEIR POSSESSION HAS BEEN PRODUCED AS OF
09:39AM 4 TODAY?

09:39AM 5 THE COURT: MR. BOSTIC, DID YOU HEAR?

09:39AM 6 WHY DON'T YOU PULL THAT MICROPHONE UP TO YOU A LITTLE,
09:39AM 7 MR. DOWNEY.

09:39AM 8 MR. DOWNEY: I BEG YOUR PARDON.

09:39AM 9 THE COURT: NO, NOT AT ALL.

09:39AM 10 MR. BOSTIC, WERE YOU ABLE TO HEAR?

09:39AM 11 MR. BOSTIC: YES, YOUR HONOR. LET ME JUST CONSULT
09:39AM 12 WITH MY TEAM TO MAKE SURE I'M ANSWERING BASED ON THE
09:39AM 13 GOVERNMENT'S KNOWLEDGE.

09:39AM 14 THE COURT: SURE. GO RIGHT AHEAD.

09:39AM 15 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

09:40AM 16 MR. BOSTIC: MY COLLEAGUE, MR. LEACH, WILL ADDRESS
09:40AM 17 THAT.

09:40AM 18 MR. LEACH: THANK YOU, YOUR HONOR.

09:40AM 19 I CAN'T MAKE THAT REPRESENTATION WITH RESPECT TO
09:40AM 20 INTERVIEWS THAT THE GOVERNMENT HAS CONDUCTED RECENTLY IN
09:40AM 21 PREPARATION FOR TRIAL. FOR EXAMPLE, WE ARE MEETING WITH A
09:40AM 22 WITNESS THIS AFTERNOON, AND WE'VE MET WITH A NUMBER OF
09:40AM 23 WITNESSES LAST WEEK. WE HAVE NOT PREPARED OR PRODUCED THE
09:40AM 24 302'S OR MOI'S FOR THOSE PARTICULAR INTERVIEWS, BUT WE'VE BEEN
09:40AM 25 PRODUCING JENCKS AND BRADY AS SOON AS IT'S PREPARED AND AS SOON

09:40AM 1 AS IT'S COMPILED. WE'VE BEEN GIVING THAT FOR ALL WITNESSES
09:40AM 2 WHETHER WE'RE GOING TO CALL THEM OR NOT.

09:40AM 3 SO I CAN'T TELL THE COURT RIGHT NOW THAT IN THE LAST
09:40AM 4 TWO MONTHS SINCE WE WERE LAST HERE WE'VE PRODUCED EVERY 302 OR
09:40AM 5 MOI THAT HAS BEEN PREPARED OF THOSE NOTES. THEY'RE IN THE
09:40AM 6 QUEUE, AND WE'RE PRODUCING THEM AS QUICKLY AS WE CAN, BUT WE'RE
09:40AM 7 ACTIVELY MEETING WITH WITNESSES AND GENERATING JENCKS AS WE GO
09:40AM 8 THROUGH THIS. SO THAT'S WHERE WE ARE ON DISCOVERY.

09:40AM 9 WE UNDERSTAND OUR OBLIGATIONS, AND WE PRODUCE THEM AS
09:40AM 10 QUICKLY AS WE CAN. AND WE UNDERSTAND AS WITNESSES ARE
09:40AM 11 TESTIFYING, COMING IN THE NEXT DAY THE NEED TO GET THOSE OUT
09:41AM 12 QUICKER EXISTS. SO WE'RE -- BUT I CAN'T TELL YOU TODAY EVERY
09:41AM 13 JENCKS STATEMENT HAS BEEN PRODUCED.

09:41AM 14 THE COURT: OKAY. WELL, TO THE EXTENT -- THERE'S A
09:41AM 15 LOT OF WORK ON BOTH SIDES, I REALIZE THAT. BUT TO OUR PREVIOUS
09:41AM 16 CONVERSATION, I APPRECIATE YOUR NEED, BOTH SIDE'S NEED TO
09:41AM 17 PREPARE, AND I ALSO APPRECIATE BOTH SIDE'S ATTENTION TO ALLOW
09:41AM 18 THE TRIAL TO PROCEED AS EFFICIENTLY AS POSSIBLE WITHOUT
09:41AM 19 UNNECESSARY BREAKS FOR ANY NECESSARY LITIGATION REGARDING
09:41AM 20 WITNESSES, EXHIBITS, AND THESE TYPES OF THINGS THAT MIGHT BE
09:41AM 21 ABLE TO BE FULFILLED OUTSIDE OF COURT.

09:41AM 22 MR. DOWNEY, ANYTHING IN RESPONSE TO MR. LEACH?

09:41AM 23 MR. DOWNEY: NO, YOUR HONOR. I THINK -- I BELIEVE
09:41AM 24 AND HOPE THE GOVERNMENT IS AWARE OF ITS OBLIGATIONS. I THINK
09:41AM 25 WHEN IT HAS THE MEMORANDA PRODUCED -- PREPARED, IT SHOULD

09:41AM 1 PRODUCE THEM QUICKLY, AND, OF COURSE, THE AGENT NOTES ARE
09:41AM 2 AVAILABLE IMMEDIATELY AT THE CONCLUSION OF THE INTERVIEW. SO
09:42AM 3 WE WOULD AT LEAST LIKE TO GET THOSE, YOU KNOW, COPIED AND SENT
09:42AM 4 TO US EVEN IF THE MEMORANDUM IS NOT YET PREPARED. WE'RE JUST A
09:42AM 5 FEW WEEKS AWAY FROM TRIAL.

09:42AM 6 THE COURT: OKAY.

09:42AM 7 ANYTHING FURTHER, MR. LEACH?

09:42AM 8 MR. LEACH: NO, YOUR HONOR.

09:42AM 9 THE COURT: OKAY. THANK YOU VERY MUCH. THANK YOU
09:42AM 10 BOTH.

09:42AM 11 LET ME -- BEFORE WE GO INTO THE PRELIMINARY JURY
09:42AM 12 INSTRUCTIONS, I DO WANT TO COVER A FEW TOPICS. THE COURT
09:42AM 13 INTENDS TO ADMONISH THE JURY BEFORE AND AFTER BREAKS USING 2.1,
09:42AM 14 MODEL 2.1. AND WHEN I SAY "MODEL," IT'S NINTH CIRCUIT JURY
09:42AM 15 INSTRUCTIONS 2.1, AND I MAY USE THAT DEPENDING ON DURING OUR
09:42AM 16 BREAK. AS I SAID, WE'LL GET A JURY SELECTION AND HAVE A
09:42AM 17 RECESS, AND I INTEND TO ADMONISH THEM WITH THAT ALSO.

09:42AM 18 I DID ASK AND REQUEST OF COUNSEL TO PREPARE JURY BINDERS
09:43AM 19 THAT WOULD INCLUDE PHOTOGRAPHS OF WITNESSES. AND I JUST WANT
09:43AM 20 TO CALL YOUR ATTENTION TO THAT AGAIN. AND, AGAIN, I DON'T
09:43AM 21 EXPECT YOU TO HAVE A TOTALITY OF A BINDER WITH ALL OF THE
09:43AM 22 WITNESSES PREPARED NOW.

09:43AM 23 BUT WHAT ARE YOUR THOUGHTS ABOUT THE TIMING OF THAT?
09:43AM 24 WOULD THIS BE A WEEKLY PRODUCTION TO THE JURY, THAT IS, WITH
09:43AM 25 THE PHOTOGRAPHS AND THE NAMES OF WITNESSES? HAVE YOU THOUGHT

09:43AM 1 ABOUT THAT?

09:43AM 2 MR. LEACH: I THINK A WEEKLY UPDATE MAKES SENSE,
09:43AM 3 YOUR HONOR.

09:43AM 4 I'M HOPEFUL THAT THE WITNESSES FROM ANY PARTICULAR WEEK
09:43AM 5 WILL REMAIN RELATIVELY FRESH IN THE JURY'S MIND, AND SO MAYBE
09:43AM 6 AT THE CONCLUSION OF COURT ON FRIDAY WE CAN UPDATE THE BINDER
09:43AM 7 WITH THE PHOTO OF THE WITNESSES THAT CAME THAT WEEK OR EVEN
09:43AM 8 MONDAY SO THAT WHEN THE JURY GETS BACK, THEY'LL HAVE WHAT
09:43AM 9 HAPPENED LAST WEEK. AND IT WILL GET LONGER AS THE TRIAL GOES
09:43AM 10 ALONG.

09:44AM 11 BUT WE'RE HAPPY TO DO WHATEVER THE COURT THINKS IS HELPFUL
09:44AM 12 TO THE JURY.

09:44AM 13 THE COURT: THANK YOU. I'M JUST TRYING TO WONDER
09:44AM 14 WHAT WORKS BEST FOR THE JURY TO RETAIN THE INFORMATION. OF
09:44AM 15 COURSE, IT'S A LONG TRIAL.

09:44AM 16 MY THOUGHT WAS THAT THE TRIAL BINDER ALLOWS THE JURY TO
09:44AM 17 SEE A PHOTOGRAPH OF THE WITNESS THAT TESTIFIED. IN THEIR
09:44AM 18 BINDER THEY MIGHT TAKE SIMULTANEOUS NOTES. IF THEY HAVE THE
09:44AM 19 PHOTOGRAPH IN ADVANCE OF THE TESTIMONY, THEY CAN ORGANIZE IT
09:44AM 20 SOMEHOW OR IN SOME WAY WITH THEIR NOTES I SUPPOSE.

09:44AM 21 IT SEEMS LIKE THAT MIGHT BE BETTER THAN WAITING UNTIL
09:44AM 22 AFTER THE WITNESS TESTIFIES AND THEN HAVE THEM POPULATE THEIR
09:44AM 23 BINDERS.

09:44AM 24 MR. LEACH: WE'RE PLEASED TO DO THAT, YOUR HONOR.

09:44AM 25 THE COURT: ANY THOUGHTS ABOUT THAT?

09:44AM 1 MR. DOWNEY: THAT'S FINE, YOUR HONOR.

09:44AM 2 THE COURT: ALL RIGHT. WHY DON'T WE DO THAT. LET

09:44AM 3 ME SEE IF WE CAN GET THE INFORMATION AS THE WITNESSES ARE

09:44AM 4 CALLED, WE CAN DISTRIBUTE THE PHOTOGRAPHS OR IF YOU HAVE A

09:44AM 5 PACKET OR SOMETHING, I'M SORRY TO BE SO GRANULAR, BUT I DO WANT

09:44AM 6 THEM TO HAVE SOME ABILITY TO MEMORIALIZE THE TESTIMONY WITH

09:44AM 7 NOTES SHOULD THEY WISH TO TAKE SOME.

09:45AM 8 MR. LEACH: WE APPRECIATE THE GRANULARITY. SO WE'RE

09:45AM 9 ENVISIONING ONE BINDER FOR THE JURY OR SHOULD WE HAVE MORE THAN

09:45AM 10 ONE?

09:45AM 11 THE COURT: WELL, I THINK WE SHOULD START WITH ONE.

09:45AM 12 MR. LEACH: OKAY.

09:45AM 13 THE COURT: AND THEIR BINDERS WILL REMAIN HERE, OF

09:45AM 14 COURSE. AND THEN LET'S SEE WHAT -- IF WE NEED MORE BINDERS,

09:45AM 15 WE'LL COME TO THAT.

09:45AM 16 MR. LEACH: OKAY. THANK YOU, YOUR HONOR.

09:45AM 17 THE COURT: THANK YOU.

09:45AM 18 (PAUSE IN PROCEEDINGS.)

09:45AM 19 THE COURT: LET ME TALK ABOUT THE ATTORNEY LOUNGE.

09:45AM 20 THIS IS FOR DEFENSE COUNSEL. WE DO HAVE AN ATTORNEY LOUNGE

09:45AM 21 THAT IS DOWNSTAIRS, MR. DOWNEY, AND I DON'T KNOW IF YOU'VE HAD

09:45AM 22 FAMILIARITY WITH IT.

09:45AM 23 I'VE INQUIRED WITH OUR CLERK WHETHER OR NOT YOU COULD

09:46AM 24 RESERVE SPACE FOR YOUR TEAM THERE, AND I WAS TOLD THAT THEY

09:46AM 25 DON'T TAKE RESERVATION, IT'S A FIRST COME FIRST SERVE THERE AS

09:46AM 1 WELL.

09:46AM 2 BUT I WAS INFORMED THAT IF YOU CHOSE TO -- IF YOU WANTED
09:46AM 3 TO USE THEIR CONFERENCE ROOM FOR YOUR TEAM'S USE, YOU COULD
09:46AM 4 SEND SOMEBODY DOWN THERE AND THEY COULD STAKE OUT A PLACE,
09:46AM 5 STAKE OUT A ROOM FOR YOU, AND I'M TOLD THAT SOMEBODY NEEDS TO
09:46AM 6 BE THERE, BUT THAT -- I DON'T ANTICIPATE THAT THERE'S GOING TO
09:46AM 7 BE -- I DON'T THINK THERE'S ANY OTHER TRIALS SUCH THAT A TEAM
09:46AM 8 WOULD TAKE OVER ANY OF THAT CONFERENCE ROOM NOW, BUT I JUST
09:46AM 9 POINT THAT OUT FOR YOUR TEAM'S INFORMATION SHOULD YOU WISH TO
09:46AM 10 USE THAT.

09:46AM 11 AND I THINK THAT INCLUDES THE CONFERENCE ROOM, THERE'S A
09:46AM 12 LARGE CONFERENCE ROOM, AND YOU MAY WANT TO LOOK AT THAT, TOO.
09:46AM 13 I'VE CHECKED WITH OUR CLERK. I DON'T BELIEVE THERE'S ANY
09:47AM 14 RESERVATIONS PENDING FOR THAT FOR COURT MEETINGS OR ANYTHING
09:47AM 15 LIKE THAT.

09:47AM 16 MR. LEACH, YOUR TEAM HAS A SPACE IN THE COURTHOUSE I
09:47AM 17 THINK.

09:47AM 18 MR. LEACH: WE DO, YOUR HONOR.

09:47AM 19 THE COURT: I THINK I TALKED ABOUT OUR COVID
09:47AM 20 SITUATION, OUR JURY PLACEMENT. MY SENSE IS THAT WHEN THE
09:47AM 21 JURORS COME IN I WILL ASK THAT THEY WEAR MASKS INITIALLY AND
09:47AM 22 WE'LL HAVE SOME INQUIRY. WE'LL KNOW INFORMATION ABOUT --
09:47AM 23 PERHAPS WE'LL KNOW INFORMATION ABOUT VACCINATIONS FROM THE
09:47AM 24 QUESTIONNAIRES. I WILL INFORM THEM ABOUT THE AIR FILTRATION.

09:47AM 25 LET ME SAY, COUNSEL, IF YOU HAVE A REQUEST FOR ONE OF

09:47AM 1 THESE PORTABLE AIR FILTERS BY YOUR TABLES, YOU SHOULD LET ME
09:47AM 2 KNOW, AND I'LL SEE IF WE CAN MAKE THAT ARRANGEMENT. I THINK WE
09:48AM 3 HAVE ACCESS TO SOME OF THESE.

09:48AM 4 WE DO HAVE A FILTRATION AT THE WITNESS STAND. IT'S
09:48AM 5 UNDERNEATH THERE, SO THAT IS ALWAYS GOING TO BE IN PLACE.

09:48AM 6 MR. DOWNEY: YOUR HONOR, IN THAT REGARD, I THINK WE
09:48AM 7 WILL LIKELY MAKE THAT REQUEST BECAUSE IT WOULD BE OUR STRONG
09:48AM 8 PREFERENCE THAT THE DEFENDANT NOT WEAR A MASK.

09:48AM 9 WOULD IT BE POSSIBLE TO POTENTIALLY USE ONE OF THOSE
09:48AM 10 FILTERS IN CONNECTION WITH DEFENSE COUNSEL TABLE? WE CAN TALK
09:48AM 11 ABOUT THE PARTICULARS OF THE ARRANGEMENT LATER, BUT JUST TO
09:48AM 12 INFORM THE COURT, I THINK WE WILL MAKE A REQUEST FOR SUCH A
09:48AM 13 FILTER.

09:48AM 14 THE COURT: OKAY. I THINK THERE'S PLUGS DOWN THERE.
09:48AM 15 I BELIEVE THERE'S ELECTRICITY AVAILABLE. SO WE'LL CHECK INTO
09:48AM 16 THAT. THANK YOU.

09:48AM 17 MR. LEACH, DO YOU HAVE A SIMILAR REQUEST FOR YOUR TEAM?

09:48AM 18 MR. LEACH: NOT AT THE MOMENT, YOUR HONOR.

09:48AM 19 THE COURT: THAT WAS AN AWKWARD QUESTION FOR YOU.
09:48AM 20 HOW MUCH DO YOU CARE ABOUT YOUR TEAMS?

09:49AM 21 MR. LEACH: WELL, I WAS WONDERING HOW MY COLLEAGUES,
09:49AM 22 MR. BOSTIC AND MR. SCHENK, WOULD ANSWER THAT, BUT IT'S NOT A
09:49AM 23 TOPIC THAT WE'VE DISCUSSED. AND I WANT MY TEAM TO BE SAFE, BUT
09:49AM 24 I THINK OUR EXPECTATION IS THAT WE WOULD BE WEARING MASKS. BUT
09:49AM 25 LET ME CONSULT WITH THEM OFFLINE, AND WE'LL GET BACK TO

09:49AM 1 MS. KRATZMANN.

09:49AM 2 THE COURT: SURE. I HAVE -- I'LL KEEP THE
09:49AM 3 PLEXIGLASS UP AS YOU'VE SEEN IT. I'VE MADE SOME CHANGES HERE,
09:49AM 4 AND I THINK THIS ONE PANEL HERE SEPARATING THE COURT REPORTER
09:49AM 5 AND THE CLERK WILL PROBABLY BE MOVED AS WELL, AND THAT WILL
09:49AM 6 GIVE ME A LITTLE BETTER EYESIGHT TO YOUR TABLE. BUT OTHERWISE
09:49AM 7 I BELIEVE THE PLEXIGLASS WILL STAY, AND I DON'T THINK I'LL
09:49AM 8 CHANGE THAT.

09:49AM 9 YOU SEE A PANEL DOWN BY THE END OF THE JURY BOX, AND THAT
09:49AM 10 WAS PLACED THERE JUST AS A TRIAL. IF THAT ONE EMPTY SEAT THERE
09:49AM 11 IS OCCUPIED BY A JUROR, I INTEND TO KEEP THAT PANEL THERE. BUT
09:49AM 12 WE'LL WORK ALL OF THOSE THINGS OUT AS NEEDED.

09:50AM 13 MR. DOWNEY: YOUR HONOR, THIS IS -- I THINK BOTH
09:50AM 14 SIDES PROBABLY HAVE AN INTEREST IN THIS, BUT I KNOW IN OTHER
09:50AM 15 COURTS THERE HAS BEEN AN ACCOMMODATION TO ALLOW THE WITNESSES
09:50AM 16 TO BE UNMASKED AND EXAMINING COUNSEL.

09:50AM 17 I JUST MENTION IT THINKING OF THE NUMBER OF FILTERS, BUT
09:50AM 18 IT DOES SEEM TO MAKE SOME SET UP OF A FILTER WHERE COUNSEL ARE
09:50AM 19 AND WHERE THE WITNESSES MIGHT BE NECESSARY IF -- SO THAT THE
09:50AM 20 WITNESS CAN BE UNMASKED SO THAT THE WITNESS WILL BE RECOGNIZED
09:50AM 21 IN THE BINDER WHEN THEY'RE SEEING IT, YOU KNOW?

09:50AM 22 THE COURT: WELL, AS I'VE SAID, THERE IS A
09:50AM 23 FILTRATION DEDICATED THERE AT THE STAND FOR THE WITNESS, AND MY
09:50AM 24 SENSE IS THAT -- AND THERE'S A PLEXIGLASS SCREEN THERE.

09:50AM 25 MY SENSE AND INITIAL THOUGHT WAS THAT THE WITNESSES WOULD

09:50AM 1 TESTIFY UNMASKED. WE MAY HAVE TO MAKE INQUIRY ABOUT
09:50AM 2 VACCINATION BECAUSE THAT CREATES ANOTHER ISSUE IN THAT REGARD.

09:51AM 3 THE TRIALS I'VE HAD EARLIER THIS YEAR, WE'VE HAD WITNESSES
09:51AM 4 WHO HAVE TESTIFIED WITH CLEAR MASKS, AND THOSE SEEMED TO WORK
09:51AM 5 AS WELL.

09:51AM 6 BUT I UNDERSTAND. MY THOUGHT IS THAT WITNESSES SHOULD
09:51AM 7 TESTIFY WITHOUT A MASK SO THAT THERE'S -- SO THAT THE JURY CAN
09:51AM 8 PROPERLY OBSERVE THEIR DEMEANOR AND WHILE THEY'RE BEING
09:51AM 9 EXAMINED.

09:51AM 10 MR. LEACH: AND WHAT ARE THE COURT'S THOUGHT ON THE
09:51AM 11 EXAMINING ATTORNEY? WILL THE EXAMINING ATTORNEY BE EXPECTED TO
09:51AM 12 WEAR A MASK?

09:51AM 13 THE COURT: WELL, YOU'VE ALL REVEALED TO ME
09:51AM 14 PREVIOUSLY THAT BOTH OF YOUR TEAMS ARE FULLY VACCINATED SO I
09:51AM 15 APPRECIATE THAT.

09:51AM 16 MY SENSE IS THAT WHEN YOU'RE EXAMINING, I'M NOT GOING TO
09:51AM 17 REQUIRE YOU TO HAVE A MASK ON. YOU'RE GOING TO BE SPEAKING
09:51AM 18 FROM LECTERNS AND YOU HAVE THE BENEFIT OF THE PLEXIGLASS THERE.
09:51AM 19 SO I'M NOT GOING TO REQUIRE YOU TO WEAR A MASK WHILE YOU'RE
09:51AM 20 EXAMINING A WITNESS IF THAT'S HELPFUL.

09:51AM 21 MR. LEACH: THANK YOU, YOUR HONOR.

09:51AM 22 MR. DOWNEY: THANK YOU.

09:52AM 23 THE COURT: LET'S SEE. WE HAVE SOME MOTIONS SET FOR
09:52AM 24 AUGUST 20TH, AND THEN WE HAVE ANOTHER MOTION FOR SET FOR
09:52AM 25 AUGUST 26TH, THAT'S THE DOW JONES MOTION CONTINUING.

09:52AM 1 I DID RECEIVE FRIDAY THE INFORMATION REGARDING THE
09:52AM 2 DOW JONES MOTION FROM THE PARTIES, AND SO THANK YOU FOR THAT.
09:52AM 3 I'VE SPENT SOME TIME OVER THE WEEKEND REVIEWING THOSE, AND
09:52AM 4 WE'LL TALK MORE ABOUT THOSE ON THE 26TH.

09:52AM 5 BUT THANK YOU FOR THOSE. THAT WAS VERY HELPFUL.

09:52AM 6 AT OUR LAST SESSION -- I DO WANT TO TALK ABOUT VOIR DIRE
09:52AM 7 FOR JUST A MOMENT. AND AS YOU KNOW, WE HAVE THE QUESTIONNAIRE.
09:52AM 8 YOU ALSO KNOW THAT THE COURT IS GOING TO DO ITS OWN VOIR DIRE
09:52AM 9 AND THAT TOUCHES ON SOME OF THE SAME TOPICS THAT ARE IN THE
09:52AM 10 QUESTIONNAIRE, AND I'LL HAVE SOME OTHER QUESTIONS.

09:52AM 11 MS. VOLKAR ASKED A QUESTION AT OUR LAST HEARING, I THINK
09:52AM 12 IT WAS, ABOUT HER CONCERN, THIS WAS REGARDING THE 12.2 ISSUE,
09:53AM 13 AND HER CONCERN ABOUT THE GOVERNMENT BEING ABLE TO FIND
09:53AM 14 INFORMATION FROM THE JURORS ABOUT CERTAIN TOPICS.

09:53AM 15 LET ME SAY -- AND I TOLD MS. VOLKAR THAT THE COURT INTENDS
09:53AM 16 TO ASK SOME QUESTIONS ABOUT THOSE AREAS, AND I JUST WANT TO
09:53AM 17 GIVE BOTH SIDES FAIR NOTICE. I WILL DO THAT. I WILL DO THAT.

09:53AM 18 AND I MIGHT ASK A QUESTION -- I HAVEN'T COMPLETED MY VOIR
09:53AM 19 DIRE YET, BUT I'M INCORPORATING SOME QUESTIONS THAT COVER THE
09:53AM 20 TOPIC OF RELATIONSHIPS AND KNOWLEDGE OF PEOPLE KNOW SOMEBODY
09:53AM 21 WHO HAS BEEN IN A RELATIONSHIP AND THOSE TYPE OF QUESTIONS. SO
09:53AM 22 I DO INTEND TO ASK AND PROBE THE JURY, SOME OF THOSE QUESTIONS
09:53AM 23 IN A GENERAL FASHION AND WE'LL SEE WHERE IT GOES.

09:53AM 24 BUT I HAVE NOT FULLY, AS I'VE SAID, COMPLETED THOSE.

09:53AM 25 BUT TO MS. VOLKAR'S POINT, I WILL BE ASKING QUESTIONS, AND

09:53AM 1 THOSE WILL BE INCLUDED IN THE COURT'S VOIR DIRE.

09:53AM 2 OKAY. LET'S TURN TO THE INSTRUCTIONS AND YOUR SUBMISSIONS
09:54AM 3 ON THAT.

09:54AM 4 MR. DOWNEY: YOUR HONOR, I'M GOING TO YIELD THE
09:54AM 5 FLOOR TO MS. SAHARIA.

09:54AM 6 THE COURT: OH, SURE.

09:54AM 7 MR. DOWNEY: THANK YOU.

09:54AM 8 THE COURT: MS. SAHARIA, NICE TO SEE YOU AGAIN.

09:54AM 9 MS. SAHARIA: GOOD MORNING, YOUR HONOR.

09:54AM 10 THE COURT: LET'S GO THROUGH -- I THINK IT'S
09:54AM 11 ITEM 10. AND THESE ARE, EXCUSE ME, RELATED TO THE PRELIMINARY
09:54AM 12 JURY INSTRUCTIONS THAT THE COURT WILL READ TO THE JURY
09:54AM 13 PRELIMINARILY. I'M LOOKING AT AND I'VE FASHIONED THESE WITH
09:54AM 14 AGAIN THE NINTH CIRCUIT MODEL INSTRUCTIONS.

09:54AM 15 THE FIRST ONE I SEE IS 1.1, AND THIS IS MS. HOLMES'S
09:55AM 16 NUMBER 1.

09:55AM 17 LET ME SAY, I'M REFERENCING DOCKET 809, WHICH IS
09:55AM 18 MS. HOLMES'S PROPOSED INSTRUCTIONS, THE GOVERNMENT'S 804
09:55AM 19 INSTRUCTIONS, THAT'S THE LATEST I THINK THAT I HAVE FROM YOU.

09:55AM 20 MS. SAHARIA: THAT'S CORRECT, YOUR HONOR.

09:55AM 21 THE COURT: MS. HOLMES WISHES TO ADD TO 1.1, THIS IS
09:55AM 22 THE DUTY OF THE JURY, AND THIS IS IN THE THIRD PARAGRAPH, I
09:55AM 23 BELIEVE, YOU WOULD LIKE TO ADD CELEBRITY POSITION INTO THAT
09:55AM 24 CATEGORY?

09:55AM 25 MS. SAHARIA: THAT'S CORRECT, YOUR HONOR. THAT WAS

09:55AM 1 A SUGGESTION THAT COMES FROM THE THIRD CIRCUIT MODEL
09:55AM 2 INSTRUCTIONS WHEN THERE ARE CASES THAT PRESENT A RISK THAT
09:55AM 3 JURORS COULD BE INFLUENCED BY THINGS SUCH A CELEBRITY OR EITHER
09:55AM 4 WITNESSES OR A DEFENDANT'S PROFESSION OR POSITION IN THE
09:56AM 5 COMMUNITY THAT THERE BE SOME SORT OF CAUTION AGAINST THAT.

09:56AM 6 THE COURT: I THINK WHAT YOU WOULD LIKE IT TO READ
09:56AM 7 IS AS FOLLOWS -- I'M LOOKING AT YOUR PAGE 2 -- "PERFORM THESE
09:56AM 8 DUTIES FAIRLY AND IMPARTIALLY. YOU SHOULD NOT BE INFLUENCED BY
09:56AM 9 ANY PERSON'S RACE, COLOR, RELIGIOUS BELIEFS, NATIONAL ANCESTRY,
09:56AM 10 SEXUAL ORIENTATION, GENDER IDENTITY, GENDER," AND THEN THIS IS
09:56AM 11 YOUR LANGUAGE, "PROFESSION, OCCUPATION, CELEBRITY, ECONOMIC
09:56AM 12 CIRCUMSTANCES, OR POSITION IN LIFE OR IN THE COMMUNITY."

09:56AM 13 MS. SAHARIA: THAT'S CORRECT, YOUR HONOR. AND I
09:56AM 14 WILL JUST NOTE THAT THERE WILL BE A NUMBER OF WITNESSES WHO
09:56AM 15 HAVE ATTAINED I THINK SIGNIFICANT SUCCESS IN THEIR PROFESSIONS
09:56AM 16 AND IN THEIR COMMUNITIES AND ARE INTERNATIONALLY KNOWN
09:56AM 17 POTENTIALLY DEPENDING ON WHO THE GOVERNMENT INTENDS TO CALL,
09:56AM 18 AND WE DO THINK THAT WOULD BE AN APPROPRIATE INSTRUCTION SO
09:56AM 19 THAT THE WITNESSES ARE NOT -- DO NOT GIVE PREFERENCE TO THOSE
09:57AM 20 WITNESSES -- EXCUSE ME, SO THE JURORS DO NOT GIVE PREFERENCE TO
09:57AM 21 THOSE WITNESSES OVER OTHERS AS JUST ONE EXAMPLE OF HOW THIS
09:57AM 22 INSTRUCTION COULD BE USEFUL.

09:57AM 23 THE COURT: ALL RIGHT. MR. LEACH.

09:57AM 24 MR. LEACH: I JUST THINK IT'S UNNECESSARY,
09:57AM 25 YOUR HONOR. I THINK ALL OF THIS IS CAPTURED BY ECONOMIC

09:57AM 1 CIRCUMSTANCES. I THINK THIS INSTRUCTION IS DESIGNED TO
09:57AM 2 INSTRUCT YOU TO PUT CERTAIN PROHIBITED BIASES TO THE SIDE, AND
09:57AM 3 I THINK IT'S REPETITIVE AND ARGUMENTATIVE AND THE COURT SHOULD
09:57AM 4 GO WITH THE PATTERN MODEL NINTH CIRCUIT INSTRUCTION AS IT'S
09:57AM 5 PROVIDED.

09:57AM 6 THE COURT: WELL, MS. SAHARIA, ECONOMIC AND
09:57AM 7 CIRCUMSTANCES ARE ALREADY IN THE MODEL INSTRUCTIONS.

09:57AM 8 MS. SAHARIA: SURE. I UNDERSTAND THOSE THINGS TO
09:57AM 9 REFER TO WEALTH OR POVERTY FOR THAT MATTER, WHICH IS DISTINCT
09:57AM 10 FROM POSITION IN THE COMMUNITY AND THE OTHER FACTORS THAT WE
09:57AM 11 IDENTIFIED, WHICH WAS NOT NECESSARILY TIED TO ONE'S ECONOMIC
09:57AM 12 CIRCUMSTANCES.

09:58AM 13 I DON'T VIEW THIS AS A TERRIBLE VERY IMPORTANT
09:58AM 14 INSTRUCTION, YOUR HONOR. IF IT'S HELPFUL TO THE COURT, WE
09:58AM 15 INTENDED TO ADDRESS ONLY A FEW OF THE INSTRUCTIONS. SO IF
09:58AM 16 YOUR HONOR WANTS TO WALK THROUGH THEM ONE BY ONE, I'M HAPPY TO
09:58AM 17 DO THAT, OTHERWISE I'M ALSO HAPPY TO FOCUS THE COURT ON THE
09:58AM 18 ONES THAT WE THINK ARE THE MOST IMPORTANT.

09:58AM 19 THE COURT: OKAY. THANK YOU. I WILL READ THIS,
09:58AM 20 THAT IS, YOUR SUBMISSION, MS. SAHARIA. I DO THINK IT'S A
09:58AM 21 LITTLE BIT BROADER, MORE SPECIFIC I SHOULD SAY, EXCUSE ME, THAN
09:58AM 22 NECESSARY. I WILL READ THE PROFESSION. I DON'T KNOW ABOUT
09:59AM 23 CELEBRITY? WHY IS THAT --

09:59AM 24 MS. SAHARIA: WELL, IT'S NO SURPRISE, YOUR HONOR,
09:59AM 25 THAT OUR CLIENT IS THE SUBJECT OF VERY INTENSE MEDIA SCRUTINY,

09:59AM 1 AND WE INCLUDED THAT LANGUAGE WHICH DOES, AGAIN, COME FROM THE
09:59AM 2 THIRD CIRCUIT MODEL INSTRUCTIONS FOR THAT REASON.

09:59AM 3 THE COURT: ALL RIGHT. THANK YOU.

09:59AM 4 I'LL GIVE THIS, MR. LEACH. AGAIN, THIS IS A PRELIMINARY
09:59AM 5 INSTRUCTION. THE JURORS WILL BE INFORMED THAT THEY WILL
09:59AM 6 RECEIVE THE FINAL INSTRUCTIONS AT THE END OF THE CASE. THESE
09:59AM 7 ARE PRELIMINARY. SO I'LL GIVE THAT LANGUAGE.

09:59AM 8 1.2 IS THE NEXT, AND THIS IS YOUR MODEL I THINK NUMBERS 2
09:59AM 9 AND 12, MS. SAHARIA.

09:59AM 10 MS. SAHARIA: THAT'S CORRECT.

09:59AM 11 THE COURT: AND THIS IS THE CHARGE AND PRESUMPTION
09:59AM 12 OF INNOCENCE.

09:59AM 13 MS. SAHARIA: THAT'S CORRECT. AND I GUESS ON THIS
09:59AM 14 ONE, I WOULD -- THERE'S ONE ISSUE THAT WE FEEL PARTICULARLY
09:59AM 15 STRONGLY ABOUT, WHICH IS THAT MODEL INSTRUCTION 1.2, AS I'M
10:00AM 16 SURE YOUR HONOR KNOWS, HAS ONE PARAGRAPH THAT DESCRIBES THE
10:00AM 17 FACT THAT THE INDICTMENT DOES NOT -- YOU KNOW, IS NOT ITSELF
10:00AM 18 EVIDENCE. THE SECOND PARAGRAPH DESCRIBES BRIEFLY THE
10:00AM 19 PRESUMPTION OF INNOCENCE.

10:00AM 20 AND THEN THERE'S A THIRD BRACKETED PARAGRAPH THAT INFORMS
10:00AM 21 THE JURY THAT IN ORDER TO HELP THE JURY FOLLOW THE EVIDENCE,
10:00AM 22 THE COURT IS PROVIDING A BRIEF SUMMARY OF THE ELEMENTS OF THE
10:00AM 23 CRIME THAT THE GOVERNMENT MUST PROVE TO MAKE ITS CASE AND THEN
10:00AM 24 IT INSTRUCTS THE COURT TO SUPPLY A BRIEF SUMMARY OF ELEMENTS OF
10:00AM 25 THE CRIME.

1 WE THINK IT'S QUITE IMPORTANT FOR THE COURT TO DO THAT IN
2 THIS CASE. WE INCLUDED SUCH A SUMMARY IN OUR PROPOSED
3 INSTRUCTION 12. THE GOVERNMENT DID NOT INCLUDE A PROPOSED
4 SUMMARY OF THE ELEMENTS.

5 THIS IS GOING TO BE A VERY LONG TRIAL. THE GOVERNMENT HAS
6 CHARGED TWO SEPARATE SCHEMES. THE JURY IS GOING TO HEAR ABOUT
7 A LOT OF THINGS THAT ARE NOT DIRECTLY THE CHARGED CONDUCT, FOR
8 INSTANCE, YOU KNOW, REGULATORY AGENCIES AND WHATNOT.

9 AND WE THINK WITHOUT THIS KIND OF ROADMAP AT THE BEGINNING
10 OF THE CASE AS TO WHAT THE TWO CHARGED SCHEMES ARE AND WHAT THE
11 ELEMENTS ARE OF THOSE VARIOUS CHARGES, IT WILL BE VERY
12 DIFFICULT FOR THE JURY TO FOLLOW THE EVIDENCE AND KIND OF MAKE
13 SENSE OF IT OVER THE MANY MONTHS THAT WILL FOLLOW.

14 SO WE STRONGLY ENCOURAGE THE COURT TO GIVE OUR SUMMARY OF
15 THE PROPOSED -- OF THE ELEMENTS. AND, AGAIN, THE GOVERNMENT
16 DID NOT PROVIDE THE COURT WITH THE PROPOSED SUMMARY.

17 THE COURT: ALL RIGHT. THANK YOU. ARE YOU -- YOU
18 KNOW, THE MODEL INSTRUCTION, THE LANGUAGE IN THE FIRST SENTENCE
19 IN THE BRACKETED, IN ORDER TO HELP YOU FOLLOW THE EVIDENCE, I
20 WILL NOW GIVE YOU A BRIEF SUMMARY OF THE ELEMENTS OF THE
21 OFFENSE.

22 I HAVE TO CONFESS WHEN I LOOKED AT YOUR PROPOSAL, IT'S NOT
23 BRIEF.

24 MS. SAHARIA: WELL, THAT'S --

25 THE COURT: I'M SORRY. IT SEEMS TO BE READING THE

10:02AM 1 FINAL JURY INSTRUCTION.

10:02AM 2 MS. SAHARIA: I DON'T THINK THAT'S THE CASE,
10:02AM 3 YOUR HONOR, BUT I ADMIT THAT PART OF THAT IS BECAUSE WE FELT IT
10:02AM 4 HELPFUL TO DESCRIBE FOR THE JURY THE FACT THAT THERE ARE TWO
10:02AM 5 SEPARATE CHARGED SCHEMES IN THIS CASE.

10:02AM 6 SO IN THE SUMMARY THAT WE DRAFTED, THERE'S A LOT OF
10:02AM 7 REPETITION BECAUSE WE REPEATED THE SAME ELEMENTS, ONCE FOR THE
10:02AM 8 CHARGED SCHEME TO DEFRAUD INVESTORS AND ONCE FOR THE CHARGED
10:02AM 9 SCHEME TO PAY CUSTOMERS JUST TO MAKE CLEAR TO THE JURY THAT
10:02AM 10 THESE ARE TWO SEPARATE CHARGED SCHEMES. I THINK THAT'S THE
10:02AM 11 REASON WHY THEY'RE SO LONG.

10:02AM 12 THERE MAY BE A WAY THAT WE COULD SUGGEST TO THE COURT
10:02AM 13 SIMPLY CONSOLIDATING THE TWO CHARGED SCHEMES INTO ONE TO MAKE
10:02AM 14 IT SHORTER.

10:02AM 15 ALSO THERE IS A SEPARATE CONSPIRACY COUNT IN ADDITION TO
10:02AM 16 THE WIRE FRAUD COUNTS, AND THOSE HAVE DIFFERENT ELEMENTS, SO
10:02AM 17 THAT IS THE REASON WHY IT'S NOT JUST ONE CHARGE. THERE'S
10:02AM 18 ACTUALLY CONSPIRACY, WIRE FRAUD, AND THEN TWO TOTALLY DIFFERENT
10:03AM 19 SCHEMES CHARGED.

10:03AM 20 THE COURT: ALL RIGHT. THANK YOU.

10:03AM 21 AND LET ME TELL YOU IN MY VOIR DIRE, THAT IS THE COURT'S
10:03AM 22 VOIR DIRE, I DO TALK ABOUT THE PRESUMPTION OF INNOCENCE, AND I
10:03AM 23 TALK ABOUT THE INDICTMENT, AND I DO SAY IN MY VOIR DIRE THE
10:03AM 24 INDICTMENT IS THE DOCUMENT, IT'S NOT PROOF OF ANYTHING, AND TO
10:03AM 25 THIS CHARGE THE DEFENDANT HAS ENTERED PLEAS OF NOT GUILTY,

10:03AM 1 WHICH IS AN ABSOLUTE DENIAL OF THE CHARGE.

10:03AM 2 MS. SAHARIA: WE APPRECIATE THAT, YOUR HONOR.

10:03AM 3 THE COURT: THE PURPOSE OF THE TRIAL IS TO DETERMINE
10:03AM 4 WHETHER THE GOVERNMENT COULD MEET THEIR BURDEN. I DO -- THAT'S
10:03AM 5 PART OF MY VOIR DIRE I JUST QUOTED TO YOU.

10:03AM 6 SO I THINK I COVERED THAT, AND I DO THAT INTENTIONALLY
10:03AM 7 RECOGNIZING THE IMPORTANCE OF THE PRESUMPTION OF INNOCENCE AND
10:03AM 8 THE ABILITY OF THE JURY TO CAPTURE THAT, THAT'S IMPORTANT, AS
10:03AM 9 WELL AS THE BURDEN THAT THE GOVERNMENT EMBRACES IS PROOF BEYOND
10:03AM 10 A REASONABLE DOUBT. THEY UNDERSTAND THAT.

10:03AM 11 I DO THINK, WHEN I LOOKED AT THIS, IT IS A LITTLE LONG.
10:03AM 12 THERE ARE SOME THINGS THAT I DON'T THINK ARE CANDIDLY
10:04AM 13 APPROPRIATE FOR A PRELIMINARY INSTRUCTION, THE REPETITIVE "IF
10:04AM 14 THE GOVERNMENT FAILS TO MEET THAT BURDEN YOU MUST FIND NOT
10:04AM 15 GUILTY."

10:04AM 16 MS. SAHARIA: SURE.

10:04AM 17 THE COURT: I THINK THAT SOUNDS MORE LIKE A FINAL
10:04AM 18 INSTRUCTION AS OPPOSED TO A PRELIMINARY.

10:04AM 19 THAT CONCEPT OF PROOF BEYOND A REASONABLE DOUBT, THAT'S
10:04AM 20 ALL CAPTURED IN OTHER COMMENTS.

10:04AM 21 MR. LEACH, DO YOU WANT TO SAY ANYTHING HERE?

10:04AM 22 MR. LEACH: WITH RESPECT TO THE DEFENDANT'S PROPOSED
10:04AM 23 INSTRUCTION NUMBER 2, THE PRESUMPTION OF INNOCENCE, IT'S
10:04AM 24 DIFFICULT FOR ME TO IMAGINE A MORE ARGUMENTATIVE INSTRUCTION.

10:04AM 25 THE PRESUMPTION OF INNOCENCE APPLIES IN EVERY CRIMINAL

10:04AM 1 CASE. THIS IS A MODEL INSTRUCTION GIVEN IN EVERY CRIMINAL
10:04AM 2 CASE. WE HAVE A PERFECTLY GOOD MODEL IN 1.2. I SEE ABSOLUTELY
10:04AM 3 NO REASON TO GO ON AND ON ABOUT WHAT THAT MEANS IN THE WAY THAT
10:04AM 4 THE DEFENSE IS SUGGESTING.

10:04AM 5 WITH RESPECT TO LISTING THE ELEMENTS OF THE CHARGE,
10:04AM 6 YOUR HONOR, I THINK THE EMPHASIS THERE IS ON BRIEF. THIS IS
10:04AM 7 NOT THE FINAL INSTRUCTION THAT THE COURT IS GOING TO GIVE ON
10:05AM 8 CONSPIRACY AND WIRE FRAUD. IT'S NOT HARD TO SAY VERY PITHILY
10:05AM 9 AS WE DO IN THE JURY QUESTIONNAIRE, WHICH I THINK IS A GOOD
10:05AM 10 MODEL FOR THE COURT TO USE HERE, WHICH IS THAT SHE'S CHARGED IN
10:05AM 11 TWO DIFFERENT CONSPIRACIES, ONE TO DEFRAUD THERANOS INVESTORS,
10:05AM 12 AND ONE TO DEFRAUD THERANOS PATIENTS. THE INDICTMENT USES THE
10:05AM 13 WORD "PATIENTS," NOT CUSTOMERS, AND SHE'S CHARGED WITH VARIOUS
10:05AM 14 COUNTS OF WIRE FRAUD. I DON'T THINK IT NEEDS TO BE MORE
10:05AM 15 COMPLICATED THAN THAT FOR THE JURY TO UNDERSTAND WHAT SHE'S
10:05AM 16 CHARGED WITH.

10:05AM 17 AND WE HAVE AN INSTRUCTION THAT GOES ON AT PAGES -- ABOUT
10:05AM 18 THE ELEMENTS IN THE PRELIMINARY INSTRUCTIONS. AS THE DEFENDANT
10:05AM 19 SUGGESTS, I THINK WE'RE REALLY RUNNING INTO CONFUSION OF THE
10:05AM 20 JURY, UNNECESSARILY BURDENING THEM WITH MORE INFORMATION THAN
10:05AM 21 THEY NEED AT THE OUTSET, AND I THINK THE EMPHASIS IS ON BRIEF.
10:05AM 22 AND I THINK THE NEUTRAL STATEMENT THAT WE HAVE IN THE JUROR
10:05AM 23 QUESTIONNAIRES IS A GOOD GUIDE THERE.

10:05AM 24 THE COURT: WELL, THANK YOU.

10:06AM 25 I DO THINK THAT THE JURY -- THESE JURORS, MANY OF THEM

10:06AM 1 WILL MOST LIKELY NOT HAVE PRIOR JURY SERVICE, AND CERTAINLY
10:06AM 2 THAT MEANS THAT THEY HAVE NOT SAT ON A WIRE FRAUD CASE, A
10:06AM 3 CONSPIRACY CASE BEFORE, AND THEY PROBABLY HAVE WATCHED CRIME
10:06AM 4 SHOWS OR MOVIES AND THEIR KNOWLEDGE OF THE CRIMINAL JUSTICE
10:06AM 5 SYSTEM MIGHT BE FORMED BY THAT OR THINGS THAT THEY'VE READ.

10:06AM 6 SO I DO THINK IT'S IMPORTANT TO GIVE AN INSTRUCTION AS TO
10:06AM 7 WHAT THE GOVERNMENT HAS TO PROVE AND SO THEY CAN LISTEN AND SEE
10:06AM 8 AND LISTEN TO THE EVIDENCE BETTER, WHAT IS WIRE FRAUD? WHAT IS
10:06AM 9 THAT?

10:06AM 10 SO SOME BRIEF DEFINITION OF THOSE CONCEPTS IS APPROPRIATE,
10:06AM 11 BUT NOT A FINAL INSTRUCTION. SO IF YOU WANT TO COME UP WITH
10:06AM 12 SOMETHING ON YOUR OWN AND SUBMIT IT TO ME NEXT WEEK OR
10:06AM 13 SOMETHING, I'M HAPPY TO RECEIVE THAT AND LOOK AT IT.

10:06AM 14 BUT, MS. SAHARIA, I APPRECIATE YOUR INVITATION. I'M NOT
10:06AM 15 GOING TO GIVE THE ENTIRETY OF WHAT YOU'VE SUBMITTED.

10:06AM 16 MS. SAHARIA: UNDERSTOOD, YOUR HONOR.

10:06AM 17 THE COURT: I WILL PROVIDE IN THE BRACKETED
10:07AM 18 INFORMATION, I DO INTEND TO SUPPLY AS THE MODEL INSTRUCTION
10:07AM 19 SUGGESTS, SUPPLY A BRIEF STATEMENT OF THE ELEMENTS OF THE
10:07AM 20 OFFENSES, AND I'D LIKE TO DO THAT. IF YOU'D LIKE TO OFFER YOUR
10:07AM 21 ASSISTANCE TO ME, I WOULD WELCOME RECEIVING THAT.

10:07AM 22 MR. LEACH: WE'LL MEET AND CONFER.

10:07AM 23 MS. SAHARIA: WE'LL MEET AND CONFER.

10:07AM 24 THE COURT: OKAY. THANK YOU.

10:07AM 25 NEXT IS THE 1.5. 5 IS MS. HOLMES'S SUGGESTION, AND THIS

10:07AM 1 IS DIRECT AND CIRCUMSTANTIAL EVIDENCE.

10:07AM 2 I THINK IF I LOOKED AT THIS, MS. SAHARIA, THE SUGGESTION
10:07AM 3 IS TO USE THE WATER HOSE EXAMPLE.

10:07AM 4 MS. SAHARIA: YES. I THINK YOU'VE USED THAT BEFORE,
10:07AM 5 AND IT COMES FROM THE COMMENTARY TO THE MODEL RULE.

10:07AM 6 THE COURT: YES.

10:07AM 7 MS. SAHARIA: WE THINK IT'S A HELPFUL EXAMPLE.

10:07AM 8 THE COURT: ANY OBJECTION TO USING THE WATER HOSE
10:07AM 9 EXAMPLE? I THINK THE SUGGESTION INCLUDES EXPERIENCE, AND IT
10:07AM 10 DOESN'T REFERENCE A NEIGHBOR AS THE SOURCE OF THE WATER.

10:08AM 11 MS. SAHARIA: I'M HAPPY TO ADD THE WORD "NEIGHBOR,"
10:08AM 12 YOUR HONOR.

10:08AM 13 MR. LEACH: YOUR HONOR, AS I WAS GOING THROUGH THIS
10:08AM 14 I NOTICED THE WORDING HAS CHANGED SLIGHTLY FROM WHAT THE NINTH
10:08AM 15 CIRCUIT HAS SUGGESTED. I THINK THE COURT SHOULD STICK TO WHAT
10:08AM 16 IS IN THE COMMENTARY.

10:08AM 17 I DON'T THINK IT'S NECESSARY, BUT I ALSO DON'T OBJECT.
10:08AM 18 AND IF IT'S AN EXAMPLE THAT THE COURT HAS USED IN THE PAST AND
10:08AM 19 FOUND HELPFUL, IT'S CERTAINLY AN ACCURATE STATEMENT.

10:08AM 20 THE COURT: WELL, I'LL GIVE THE EXAMPLE. IT DOES
10:08AM 21 TALK ABOUT RAIN, AND I'M SURE THE JURORS ARE GOING TO WONDER
10:08AM 22 WHAT THAT IS. WE HAVEN'T HAD IT IN SO LONG.

10:08AM 23 ALL RIGHT. I'LL GIVE THAT. THANK YOU.

10:08AM 24 1.6 AND MS. HOLMES'S NUMBER 6 IS RULING ON OBJECTIONS.
10:08AM 25 AND IT APPEARS MS. HOLMES WISHES TO ADD TO THE MODEL, "IT IS

1 THE DUTY OF THE ATTORNEY FOR EACH SIDE OF THE CASE TO OBJECT,"
2 INSTEAD OF THE MODEL LANGUAGE WHICH IS THAT "A LAWYER MAY
3 OBJECT."

4 MS. SAHARIA: THAT'S CORRECT, YOUR HONOR. WE THINK
5 IT'S IMPORTANT FOR THE JURY TO UNDERSTAND THAT THERE MAY BE
6 CIRCUMSTANCES IN WHICH THE LAWYER, ESPECIALLY ON THE DEFENSE
7 SIDE, HAS AN ETHICAL OBLIGATION TO OUR CLIENT TO OBJECT, AND WE
8 THINK THE MAIN LANGUAGE COULD LEAD TO A SITUATION WHERE THE
9 JURY UNFAIRLY MAY DRAW PREJUDICE FROM THE FACT THAT DEFENSE
10 COUNSEL, FOR INSTANCE, ARE OBJECTING.

11 SO THIS IS, I THINK, A COROLLARY TO A SEPARATE INSTRUCTION
12 THAT WE PROPOSED, WHICH IS INSTRUCTION NUMBER 7, WHERE WE
13 SUGGEST INFORMING THE JURY THAT THEY SHOULD NOT BE PREJUDICED
14 AGAINST A PARTY OR THEIR LAWYER FROM THE FACT THAT THE
15 ATTORNEYS ARE OBJECTING OR HAVE OBJECTED. SO THE TWO KIND OF
16 GO HAND IN HAND.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MR. LEACH.

19 MR. LEACH: WE OBJECT, YOUR HONOR. I THINK THE
20 DEFENSE PROPOSAL IN 1.6 ACTUALLY CHANGES THE MEANING OF THE
21 MODEL INSTRUCTION. THE MODEL INSTRUCTION SAYS THAT LAWYER MAY
22 OBJECT, NOT MUST OBJECT.

23 OBVIOUSLY LAWYERS HAVE ETHICAL DUTIES TO THEIR CLIENTS,
24 BUT IT DOESN'T REQUIRE THEM TO RAISE EVERY CONCEIVABLE
25 OBJECTION IN EVERY MOMENT. I THINK THIS IS ARGUMENTATIVE. SO

1 WE OBJECT TO THE CHANGING OF THE MODEL INSTRUCTION IN NUMBER 6.

2 I THINK THEY HAVEN'T CITED A SINGLE CASE WHERE THIS HAS
3 BEEN DONE IN THE NINTH CIRCUIT OR IN THIS COURT, AND I DON'T
4 SEE ANY PARTICULAR REASON WHY IN THIS CASE THE COURT SHOULD
5 DEVIATE FROM THE MODEL INSTRUCTION.

6 AND WE OBJECT TO PROPOSED JURY INSTRUCTION NUMBER 7,
7 CONDUCT OF COUNSEL. AGAIN, THERE'S NO INSTANCE THAT I CAN SEE
8 WHERE THE COURT HAS GIVEN THIS INSTRUCTION IN THE PAST.
9 LAWYERS MAKE JUDGMENTS ALL OF THE TIME ABOUT WHETHER OR NOT TO
10 ASSERT A PARTICULAR OBJECTION AT A PARTICULAR MOMENT, AND I
11 THINK GIVING THIS COULD ACTUALLY GIVE A MISCONCEPTION TO THE
12 JURY. SO WE URGE THE COURT NOT TO CHANGE THE MODEL AND NOT TO
13 GIVE INSTRUCTION NUMBER 7.

14 THE COURT: WELL, MS. SAHARIA, WHEN I LOOKED AT THIS
15 I THOUGHT INFORMING THE JURY THAT THE ATTORNEYS HAVE DUTIES
16 MIGHT CALL FOR THE JURY TO SOMEHOW SPECULATE ON THAT, ON AN
17 ISSUE THAT THEY SHOULDN'T EITHER IN DELIBERATIONS OR DURING THE
18 TRIAL, WHY DIDN'T THEY OBJECT? OH, THEY HAVE A DUTY. OH, THAT
19 MEANS IT'S OKAY. YOU SEE WHAT I'M SAYING? I'M GOING IN A
20 DIRECTION LIKE THAT. I DON'T THINK THE JURY SHOULD BE TASKED
21 WITH DETERMINING DUTIES OF LAWYERS.

22 I DO THINK THAT THE LANGUAGE OF "MAY OBJECT" ALLOWS THE
23 JURY TO BE INFORMED THAT THAT CAN HAPPEN.

24 I TAKE YOUR POINT THAT WHAT YOU'RE TELLING ME AND
25 SIGNALLING ALL OF US IS THAT THIS CASE IS GOING TO BE HARD

1 FOUGHT, IT ALREADY HAS BEEN IN OUR PRETRIAL LITIGATION, AND IT
2 WILL CONTINUE THROUGH THE TRIAL. BOTH OF YOU ARE REPRESENTING
3 YOUR RESPECTIVE SIDES ZEALOUSLY WITH THE HIGHEST DEGREE OF
4 ETHICS AND INTEGRITY, AND THAT WILL CONTINUE THROUGH THE TRIAL
5 I AM CERTAIN OF IT.

6 BUT I THINK THE SUGGESTION TO THE JURY, YOUR CERTAIN MIGHT
7 BE I'M NOT ASKING YOU A QUESTION, YOUR CERTAIN MIGHT BE IS,
8 JUDGE, WE'RE GOING TO BE OBJECTING TO JUST ABOUT EVERYTHING
9 THAT THE GOVERNMENT PUTS UP, AND WE DON'T WANT THE JURY TO FEEL
10 LIKE WHY ARE THEY DOING THAT? WHY DO THEY OBJECT? AND YOU
11 WOULD LIKE SOME COVER FOR THAT, LET ME JUST PUT IT THAT WAY.
12 THAT'S WHAT THIS SPEAKS TO.

13 I THINK THE MODEL INSTRUCTION TALKS ABOUT "MAY." I'M
14 MAKING A NOTE TO MYSELF THAT I MAY, IN MY VOIR DIRE, I MAY
15 COVER A LITTLE BIT ABOUT THIS, AND I MAY SPEAK TO THE FACT THAT
16 THE ADVERSARIAL PROCESS IS SUCH THAT THE PARTIES WILL OBJECT,
17 AND THEY HAVE A RIGHT TO DO SO, AND THAT'S SOMETHING THAT
18 HAPPENS.

19 THIS WILL ALSO COME UP DURING OUR INSTRUCTION ABOUT BENCH
20 CONFERENCES AND SIDE-BARS THAT WE'LL TALK ABOUT IN A MOMENT,
21 AND MY SENSE IS IN MY VOIR DIRE I'LL INCORPORATE SOME OF THIS
22 TO THE JURY JUST TO INFORM THEM THIS IS HOW TRIALS PROCEED AND
23 THERE MAY BE OBJECTIONS, AND I EXPECT THAT THIS IS GOING TO BE
24 VIGOROUSLY LITIGATED ON BOTH SIDES. I THINK THAT COVERS IT.
25 I'LL DO THAT IN MY COMMENTS.

10:13AM 1 BUT I DON'T THINK I NEED TO ADD THE LANGUAGE "DUTY OF THE
10:13AM 2 ATTORNEYS," SO I'M GOING TO DECLINE YOUR INVITATION TO DO SO.

10:13AM 3 MS. SAHARIA: I UNDERSTAND, YOUR HONOR. I HOPE WE
10:13AM 4 ARE ABLE TO RESOLVE MOST OF THE ISSUES OUTSIDE OF THE PRESENCE
10:13AM 5 OF THE JURY, WHICH YOU WERE DISCUSSING WITH MR. DOWNEY EARLIER,
10:13AM 6 SO I DON'T THINK IT WILL BE THE CASE THAT WE WILL BE OBJECTING
10:13AM 7 TO EVERYTHING THE GOVERNMENT DOES, BUT IT WILL BE A HARD FOUGHT
10:13AM 8 TRIAL OF COURSE.

10:13AM 9 THE COURT: I UNDERSTAND.

10:14AM 10 1.7 IS THE CREDIBILITY MUCH WITNESSES. AND YOUR
10:14AM 11 SUGGESTION, MS. HOLMES'S SUGGESTION IS 9 I THINK. AND THIS
10:14AM 12 ALSO ADDS THE LANGUAGE OF PROFESSION, OCCUPATION, CELEBRITY,
10:14AM 13 ECONOMIC CIRCUMSTANCES AS IN 1.1.

10:14AM 14 MR. LEACH, YOU HAVE THE SAME OBJECTIONS, I TAKE IT?

10:14AM 15 MR. LEACH: I DO, YOUR HONOR. I ACTUALLY THINK IT'S
10:14AM 16 A MISSTATEMENT TO SAY THAT THE JURY CAN'T CONSIDER AS
10:14AM 17 CREDIBILITY SOMEBODY'S PROFESSION. CERTAINLY IT'S A FACT THAT
10:14AM 18 A JURY CAN RELY ON.

10:14AM 19 I REALLY THINK THIS LANGUAGE IS GOING TO PROHIBITIVE BASIS
10:14AM 20 FOR MAKING A CREDIBILITY DETERMINATION AND THROWING IN THINGS
10:14AM 21 LIKE PROFESSION AND CELEBRITY I REALLY THINK JUST CONFUSES THE
10:14AM 22 MATTER, AND IT'S JUST UNNECESSARY AND ARGUABLY WRONG.

10:15AM 23 MS. SAHARIA: WELL, I DON'T THINK WE'RE TELLING THE
10:15AM 24 JURY YOU CANNOT CONSIDER IT.

10:15AM 25 IT'S TELLING THE JURY NOT TO AVOID BIAS, AND THAT'S A

10:15AM 1 DIFFERENT THING. BUT I'M CONTENT TO REST ON WHAT I'VE ALREADY
10:15AM 2 SAID BEFORE WITH RESPECT TO THIS INSTRUCTION.

10:15AM 3 THE COURT: I THINK I'LL LEAVE IT IN 1.1, BUT I
10:15AM 4 DON'T THINK IT'S NECESSARY HERE UNDER CREDIBILITY, MS. SAHARIA.

10:15AM 5 MS. SAHARIA: UNDERSTOOD, YOUR HONOR.

10:15AM 6 THE COURT: AND THEN 1.8 AND SUGGESTED 15 IS TO -- I
10:15AM 7 THINK IT'S TO ADD REDDIT I THINK.

10:15AM 8 MS. SAHARIA: I THINK THAT IS ONE OF THE
10:15AM 9 SUGGESTIONS, YOUR HONOR, JUST TO ENCOMPASS WHAT WE KNOW OR ARE
10:15AM 10 VERY COMMONLY VIEWED SOCIAL MEDIA CITES. THERE ARE A FEW OTHER
10:15AM 11 SUGGESTIONS WITH RESPECT TO 1.8.

10:15AM 12 ONE IS TO INCLUDE THE BRACKETED LANGUAGE FROM THE MODEL
10:15AM 13 INSTRUCTION THAT INFORMS THE JURY OF THE RISK THAT IF THEY ARE
10:15AM 14 EXPOSED TO MEDIA, THERE'S A RISK OF A MISTRIAL, WHICH COULD
10:15AM 15 CAUSE THE TRIAL TO HAVE TO HAPPEN AGAIN.

10:16AM 16 WE THINK THAT'S AN IMPORTANT CAUTION IN THIS CASE GIVEN
10:16AM 17 WHAT WE KNOW WILL BE THE VOLUME OF MEDIA.

10:16AM 18 I THINK JURORS WILL HAVE TO TAKE PROACTIVE STEPS
10:16AM 19 POTENTIALLY TO AVOID BEING EXPOSED TO MEDIA IN THIS CASE GIVEN
10:16AM 20 THE UBIQUITY OF COVERAGE THAT IS LIKELY, AND WE THINK VERY
10:16AM 21 STRONG CAUTIONARY INSTRUCTIONS WITH RESPECT TO MEDIA ARE
10:16AM 22 CRITICAL.

10:16AM 23 WE HAVE ALSO SUGGESTED ADDING A FEW PARAGRAPHS TO THIS
10:16AM 24 INSTRUCTION THAT ARE LARGELY BASED ON THE MODEL INSTRUCTION
10:16AM 25 THAT COMES FROM THE O'MALLEY TREATISE. I'M SURE YOUR HONOR IS

10:16AM 1 AWARE OF THE O'MALLEY TREATISE WHICH IS A COMPENDIUM OF
10:16AM 2 COMMONLY USED FEDERAL JURY INSTRUCTIONS. THAT TREATISE HAS AN
10:16AM 3 INSTRUCTION FOR CASES WHERE THERE HAS BEEN SUBSTANTIAL OR
10:16AM 4 PRETRIAL PUBLICITY. THE NINTH CIRCUIT MODEL INSTRUCTIONS CAN
10:16AM 5 APPLY UNIVERSALLY IN CASES WHERE THERE EITHER HAS BEEN MEDIA
10:16AM 6 ATTENTION OR HASN'T BEEN, AND WE THINK A STRONGER WARNING IN
10:17AM 7 CASES WHERE THERE HAS BEEN THE AMOUNT OF MEDIA ATTENTION AS
10:17AM 8 THIS ONE IS APPROPRIATE.

10:17AM 9 SO WE'VE SUGGESTED TWO PARAGRAPHS THAT COME -- THAT
10:17AM 10 LARGELY COME FROM THAT INSTRUCTION, BUT I WOULD URGE THE COURT
10:17AM 11 IN PARTICULAR TO ADD THAT BRACKETED LANGUAGE THAT COMES FROM
10:17AM 12 THE MODEL INSTRUCTIONS.

10:17AM 13 THE COURT: THE FINAL BRACKETED INSTRUCTION
10:17AM 14 INFORMING THE JURY ABOUT JEOPARDIZING THE FAIRNESS OF A TRIAL
10:17AM 15 AND A MISTRIAL?

10:17AM 16 MS. SAHARIA: YES, YOUR HONOR.

10:17AM 17 THE COURT: AND LET ME SAY I TYPICALLY DO. THAT'S A
10:17AM 18 STANDARD PRACTICE OF MINE TO READ THAT.

10:17AM 19 MS. SAHARIA: GREAT.

10:17AM 20 THE COURT: AND I DON'T THINK I'LL DEPART FROM THAT
10:17AM 21 IN THIS CASE.

10:17AM 22 MR. LEACH?

10:17AM 23 MR. LEACH: NO PROBLEM WITH THE PROVISION THAT THE
10:17AM 24 COURT JUST TALKED ABOUT.

10:17AM 25 I THINK ADDING REDDIT IS UNNECESSARY BUT NOT

10:17AM 1 OBJECTIONABLE. I THINK IT'S ALREADY QUITE SPECIFIC WHAT THE
10:17AM 2 JURY SHOULD NOT BE DOING.

10:17AM 3 WE DO OBJECT TO THE TWO ITALICIZED PARAGRAPHS ON PAGE 21
10:17AM 4 AT 809. I THINK THE ADMONITION THAT THE JURY SHOULD NOT BE
10:18AM 5 CONSUMING NEWS ARTICLES ABOUT THE CASE IS GOING TO BE MADE TO
10:18AM 6 THEM IN THE JURY QUESTIONNAIRE. IT'S ADEQUATELY MADE BY THE
10:18AM 7 MODEL INSTRUCTION, AND I THINK THE PROPOSALS ARE ARGUMENTATIVE
10:18AM 8 AND GO BEYOND EVEN THE O'MALLEY TREATISE, WHICH, AGAIN, HASN'T
10:18AM 9 BEEN USED IN THE NINTH CIRCUIT TO MY KNOWLEDGE AND HASN'T BEEN
10:18AM 10 USED IN THIS COURT.

10:18AM 11 IT SAYS, "STATEMENTS IN THE MEDIA ARE NOT RELIABLE SOURCES
10:18AM 12 OF INFORMATION BECAUSE THEY DO NOT REFLECT THE HALLMARKS OF OUR
10:18AM 13 ADVERSARIAL SYSTEM OF JUSTICE."

10:18AM 14 THAT'S NOT NECESSARILY CORRECT. CERTAINLY IT'S NOT THE
10:18AM 15 SAME THING AS COURTROOM TESTIMONY, BUT I THINK THAT GOES
10:18AM 16 OVERBOARD IN SAYING YOU COULD NEVER IN ALL CIRCUMSTANCES RELY
10:18AM 17 ON THE STATEMENT IN THE MEDIA.

10:18AM 18 I THINK THEY SHOULD BE TOLD DON'T CONSUME THE MEDIA, THE
10:18AM 19 COURT SHOULD USE THE MODEL INSTRUCTION. THESE TWO PARAGRAPHS
10:18AM 20 ARE ARGUMENTATIVE AND IN SOME CASES IF TAKEN OUT OF CONTEXT
10:18AM 21 INACCURATE.

10:19AM 22 IF THE COURT IS INCLINED TO GIVE A GREATER ADMONITION, I
10:19AM 23 THINK THE JUROR QUESTIONNAIRE THAT WE'VE SETTLED ON USES
10:19AM 24 LANGUAGE AND AN ADMONITION THAT, FRANKLY, SHOULD BE MADE
10:19AM 25 THROUGHOUT THE TRIAL AND IS MUCH MORE APPROPRIATE THAN WHAT IS

10:19AM 1 HERE IN THE DEFENSE PROPOSAL.

10:19AM 2 THE COURT: THANK YOU. THERE WAS ONE OTHER
10:19AM 3 ADDITION.

10:19AM 4 TO GO BACK, I THINK MS. SAHARIA ADDS THE LANGUAGE THROUGH
10:19AM 5 GOOGLE OR OTHERWISE. YOU HAD THE SAME OPINION AS TO REDDIT ON
10:19AM 6 THAT.

10:19AM 7 MR. LEACH: YES. CERTAINLY NOT OBJECTIONABLE, BUT
10:19AM 8 IT'S ADDING MORE WORDS TO AN ALREADY LONG INSTRUCTION.

10:19AM 9 THE COURT: RIGHT. OKAY.

10:19AM 10 MS. SAHARIA, I CAPTURE THE CONCERN THAT YOU HAVE ABOUT
10:19AM 11 MEDIA AND THE JURORS PERHAPS BEING INFLUENCED BY MEDIA AND THE
10:19AM 12 DESIRE TO AVOID THAT.

10:19AM 13 THE QUESTIONNAIRE IS VERY THOROUGH. IT DOES TOUCH ON
10:19AM 14 THAT. IT HAS SPECIFIC QUESTIONS TO MEDIA. SO I THINK THEY
10:19AM 15 WILL BE INFORMED, AND YOU WILL BE ABLE TO VOIR DIRE ON THAT.

10:20AM 16 THE QUESTION ABOUT THE TRIAL PROCESS, THE MODEL
10:20AM 17 INSTRUCTION SPEAKS TO THAT IN THE SECOND TO THE LAST PARAGRAPH.
10:20AM 18 IT TALKS ABOUT INFORMATION THAT IS MISLEADING INFORMATION THAT
10:20AM 19 HAS NOT BEEN TESTED BY THE TRIAL PROCESS. AND I THINK THAT
10:20AM 20 SPEAKS TO --

10:20AM 21 MS. SAHARIA: IT DOES, YOUR HONOR.

10:20AM 22 THE COURT: -- WHAT YOUR CONCERNS ARE. AND I READ
10:20AM 23 THAT WITH EMPHASIS WHEN I READ THESE INSTRUCTIONS, THE MODEL
10:20AM 24 INSTRUCTION TO THE JURY.

10:20AM 25 I THINK THE MODEL INSTRUCTION CAPTURES YOUR CONCERNS. SO

10:20AM 1 I'M GOING TO RESPECTFULLY DECLINE YOUR INVITATION TO ADD THOSE
10:20AM 2 TWO PARAGRAPHS. AGAIN, THIS IS SOMETHING THAT MAY COME UP
10:20AM 3 DURING THE COURT'S VOIR DIRE, AND I APPRECIATE YOU RAISING IT
10:20AM 4 AT THIS POINT.

10:20AM 5 MS. SAHARIA: MAY I ASK ONE QUESTION, YOUR HONOR,
10:20AM 6 ABOUT YOUR EARLIER COMMENTS WITH RESPECT TO THE CAUTIONARY BIN
10:20AM 7 TRIAL INSTRUCTION WHICH IS 2.1.

10:20AM 8 THE COURT: YES.

10:20AM 9 MS. SAHARIA: THAT INSTRUCTION I KNOW HAS TWO
10:20AM 10 ALTERNATIVES, AND I WAS CURIOUS WHICH OF THE TWO ALTERNATIVES
10:20AM 11 THE COURT HAD SETTLED ON.

10:21AM 12 WE HAVE PROPOSED THAT THE COURT INDIVIDUALLY ASK THE
10:21AM 13 WITNESSES WHETHER THEY HAVE BEEN EXPOSED TO ANY MEDIA, THAT IS
10:21AM 14 AN ALTERNATIVE TWO.

10:21AM 15 I WILL ALSO NOTE THAT I THINK SOMETIMES COURTS WILL, IN
10:21AM 16 ADDITION TO WHAT IS IN THE CAUTIONARY INSTRUCTION, I DON'T KNOW
10:21AM 17 IN THIS CIRCUIT BUT I KNOW IN GENERAL COURTS OFTEN TELL JURORS
10:21AM 18 NOT ONLY TO TELL THE COURT IF THEY'VE BEEN EXPOSED TO MEDIA BUT
10:21AM 19 TO TELL THE COURT WHETHER ANY OF THEIR FELLOW JURORS HAVE BEEN
10:21AM 20 EXPOSED TO MEDIA, AND I WOULD JUST NOTE THAT THAT WOULD BE
10:21AM 21 SOMETHING ELSE THAT WE WOULD SUGGEST.

10:21AM 22 THE COURT: SO YOU WOULD LIKE THE COURT TO EXERCISE
10:21AM 23 THE OPTION OF INDIVIDUALLY ASKING EVERY JUROR THAT QUESTION?

10:21AM 24 MS. SAHARIA: YES, YOUR HONOR.

10:21AM 25 THE COURT: AND THAT WOULD BE BEFORE THE PROCEEDINGS

10:21AM 1 BEGIN?

10:21AM 2 MS. SAHARIA: YES, AND PRESUMABLY IT WOULD BE VERY
10:21AM 3 SHORT BECAUSE HOPEFULLY THEY WILL ALL ANSWER NO.

10:21AM 4 THE COURT: AS OPPOSED TO A COLLECTIVE PLEASE RAISE
10:21AM 5 YOUR HAND IF YOU HAVE.

10:22AM 6 MS. SAHARIA: YES, YOUR HONOR. THAT'S CONTEMPLATED
10:22AM 7 AS ONE OF THE TWO ALTERNATIVES BY THE NINTH CIRCUIT
10:22AM 8 INSTRUCTIONS.

10:22AM 9 THE COURT: YES.

10:22AM 10 MR. LEACH: I URGE THE COURT TO DO IT COLLECTIVELY.
10:22AM 11 I DON'T THINK IT'S NECESSARY TO PUT INDIVIDUAL JURORS ON THE
10:22AM 12 SPOT THAT EARLY IN THE TRIAL. THE COLLECTIVE PLEASE RAISE YOUR
10:22AM 13 HAND IS A PERFECTLY GOOD WAY TO DO IT, AND THE GOVERNMENT URGES
10:22AM 14 THE COURT TO --

10:22AM 15 THE COURT: WELL, THERE'S ANOTHER WAY TO DO IT, I
10:22AM 16 SUPPOSE, THAT CAPTURES BOTH VERSIONS WHICH IS AS WE DO WHEN WE
10:22AM 17 POLL JURORS AT THE END OF A TRIAL FOR A VERDICT THE QUESTION IS
10:22AM 18 ASKED HAVE YOU, JUROR NUMBER 1; HAVE YOU, JUROR NUMBER 2; HAVE
10:22AM 19 YOU, JUROR NUMBER 3, AS OPPOSED TO ASKING EACH INDIVIDUAL JUROR
10:22AM 20 THAT SAME QUESTION AGAIN, AND THAT MIGHT BE WHAT I'LL USE.

10:22AM 21 IF I USE ANYTHING ABOUT THE INDIVIDUAL, IT WOULD PROBABLY
10:22AM 22 BE THE POLLING TYPE, MS. SAHARIA --

10:22AM 23 MS. SAHARIA: UNDERSTOOD. I THINK THAT WOULD BE
10:22AM 24 APPROPRIATE, YOUR HONOR.

10:22AM 25 THE COURT: -- AS OPPOSED TO AN INDIVIDUAL, WHICH I

10:22AM 1 THINK IS A BLEND OF BOTH OF THOSE.

10:23AM 2 BUT I'M NOT GOING TO ASK INDIVIDUALLY AND READ THAT
10:23AM 3 QUESTION INDIVIDUALLY TO EACH JUROR.

10:23AM 4 MS. SAHARIA: SURE. OKAY.

10:23AM 5 THE COURT: LET'S SEE. NEXT I THINK IS NUMBER 16,
10:23AM 6 AND IT'S 1.11. I THINK THIS JUST REPLACES MS. HOLMES FOR
10:23AM 7 DEFENDANT.

10:23AM 8 MS. SAHARIA: SO I THINK THE NINTH CIRCUIT MODEL
10:23AM 9 CONTEMPLATES TWO ALTERNATIVES. ONE IS THAT THE COURT INSTRUCTS
10:23AM 10 THE JURY BEFORE CLOSING ARGUMENTS AND THE OTHER IS THAT THE
10:23AM 11 INSTRUCTIONS OCCUR AFTER CLOSING ARGUMENTS.

10:23AM 12 IT'S OUR PROPOSAL, WHICH I THINK IS CONSISTENT WITH
10:23AM 13 YOUR HONOR'S PRACTICE, THAT THEY BE READ AFTER THE CLOSING
10:23AM 14 ARGUMENTS, AND I THINK THE GOVERNMENT PROPOSED THE OPPOSITE IN
10:23AM 15 THEIR PROPOSED INSTRUCTION. SO THAT'S ALL THIS ONE IS FOR.

10:23AM 16 THE COURT: I DO INSTRUCT AFTER CLOSING ARGUMENTS,
10:24AM 17 AND I'LL INSTRUCT THE JURY AS MUCH IN THE PRELIMINARY
10:24AM 18 INSTRUCTIONS. THAT'S THE ORDER.

10:24AM 19 MR. LEACH: VERY WELL.

10:24AM 20 THE COURT: AND I'LL EXCHANGE FROM DEFENDANT TO
10:24AM 21 MS. HOLMES.

10:24AM 22 MS. SAHARIA: THANK YOU, YOUR HONOR.

10:24AM 23 THE COURT: ALL RIGHT. LET'S MOVE TO SPECIFIC
10:24AM 24 INSTRUCTIONS. I THINK THESE ARE INSTRUCTIONS, MS. SAHARIA,
10:24AM 25 THAT YOU'VE ASKED ABOUT SPECIFICALLY.

10:24AM 1 MS. SAHARIA: THAT'S CORRECT, YOUR HONOR. I THINK
10:24AM 2 WE'VE COVERED THE FIRST ONE WHICH IS NUMBER 7.

10:24AM 3 THE COURT: YES.

10:24AM 4 MS. SAHARIA: I THINK WE CAN SKIP THAT ONE.

10:24AM 5 THE COURT: LET ME -- I WAS THINKING IT'S POSSIBLE
10:24AM 6 THAT I COULD ADD TO 1.6, THE LANGUAGE THAT IS 1.16 MODIFIED,
10:24AM 7 "DO NOT CONSIDER MY SUSTAINING OR OVERRULING AN OBJECTION AS
10:24AM 8 ANY INDICATION OF MY OPINION OF THE CASE OR WHAT YOUR VERDICT
10:24AM 9 SHOULD BE."

10:24AM 10 I JUST LOOKED AND THOUGHT, WELL, THAT MIGHT BE A PLACE TO
10:24AM 11 PUT IT.

10:24AM 12 MR. LEACH: I'M SORRY, YOUR HONOR. WHICH
10:25AM 13 INSTRUCTION ARE WE --

10:25AM 14 THE COURT: WELL, I WAS SUGGESTING TO MAYBE ADDING
10:25AM 15 TO 1.6 THAT LANGUAGE THAT I JUST READ WHICH IS LANGUAGE FROM
10:25AM 16 1.16.

10:25AM 17 MR. LEACH: THE DEFENSE --

10:25AM 18 MS. SAHARIA: YOU WOULD READ THAT LANGUAGE TWICE,
10:25AM 19 YOUR HONOR?

10:25AM 20 THE COURT: WELL, LET'S MOVE ON. I DON'T THINK IT'S
10:25AM 21 NECESSARY.

10:25AM 22 MS. SAHARIA: I THINK AS LONG AS YOUR HONOR GIVES
10:25AM 23 1.16 AT SOME TIME THAT'S FINE WITH US, YOUR HONOR.

10:25AM 24 THE COURT: RIGHT.

10:25AM 25 LET'S MOVE TO NUMBER 8. NUMBER OF WITNESSES AND

10:25AM 1 UNCONTRADICTED TESTIMONY.

10:25AM 2 AND I THINK YOU SUGGESTED THAT THIS BE READ BEFORE THE
10:25AM 3 CREDIBILITY OF WITNESSES?

10:25AM 4 MS. SAHARIA: THAT'S HOW IT APPEARS IN THE SAND
10:25AM 5 TREATISE, WHICH IS THE OTHER COMMONLY CONSULTED TREATISE ON
10:25AM 6 MODEL JURY INSTRUCTIONS.

10:25AM 7 WE WOULD BE CONTENT FOR THE COURT TO PUT IT WHEREVER IT
10:25AM 8 WOULD LIKE. I THINK THIS IS AN IMPORTANT INSTRUCTION, AGAIN,
10:25AM 9 GIVEN THE LENGTH OF THE TRIAL AND THE NUMBER OF WITNESSES
10:25AM 10 DISCLOSED BY THE GOVERNMENT.

10:25AM 11 IT COULD WELL BE SEVERAL MONTHS BEFORE THE JURY WILL HEAR
10:26AM 12 ANY DEFENSE WITNESSES IF WE CHOOSE TO PUT ON A DEFENSE CASE.

10:26AM 13 AND THE JURY COULD WELL DRAW, I THINK, UNFAIR CONCLUSIONS
10:26AM 14 FROM THE NUMBER OF GOVERNMENT WITNESSES THAT ARE GOING TO BE
10:26AM 15 CALLED. SO THIS IS, IN MY EXPERIENCE, A COMMONLY GIVEN
10:26AM 16 INSTRUCTION.

10:26AM 17 IN OTHER CASES THAT I'VE BEEN INVOLVED IN WHERE THE COURT
10:26AM 18 INSTRUCTS THE JURY JUST NOT TO DRAW UNFAIR INFERENCES FROM THE
10:26AM 19 FACT THAT ONE PARTY CALLS MORE WITNESSES THAN THE OTHER PARTY.

10:26AM 20 THE COURT: 1.7 INFORMS THE JURY OF THAT I THINK,
10:26AM 21 DOESN'T IT? IT SUGGESTS THAT THE EVIDENCE IS NOT DEPENDENT OF
10:26AM 22 THE NUMBER OF WITNESSES WHO TESTIFY ABOUT IT.

10:26AM 23 MS. SAHARIA: THAT'S CORRECT, BUT I THINK IT'S A
10:26AM 24 SLIGHTLY DIFFERENT, A SLIGHTLY DIFFERENT ISSUE. THIS IS MORE
10:26AM 25 ABOUT THE QUANTITY OF WITNESSES CALLED BY EITHER SIDE, NOT

10:26AM 1 ABOUT THE WEIGHT OF ANY PARTICULAR PIECE OF EVIDENCE AS TO ONE
10:26AM 2 FACT, WHICH IS WHAT 1.7 IS GETTING AT.

10:27AM 3 MR. LEACH: I THINK THE COURT IS CORRECT THAT THE
10:27AM 4 FIRST POINT IS COVERED BY 1.7 AND THAT THIS IS -- THIS
10:27AM 5 INSTRUCTION IS JUST ARGUMENT.

10:27AM 6 SO THE SECOND POINT, I THINK THAT WILL BE COVERED BY THE
10:27AM 7 FINAL INSTRUCTIONS WHERE THE COURT IS DESCRIBING THE
10:27AM 8 PRESUMPTION OF INNOCENCE AND THE FACT THAT THE DEFENDANT
10:27AM 9 DOESN'T NEED TO PUT ON A CASE. I THINK THIS IS ARGUMENTATIVE.
10:27AM 10 THERE'S NO EXAMPLE OF THIS MODEL -- THIS INSTRUCTION BEING
10:27AM 11 GIVEN IN THE NINTH CIRCUIT OR THE DISTRICT COURT, AND I SEE NO
10:27AM 12 REASON TO INCLUDE IT IN THE PRELIMINARY INSTRUCTIONS AT THE
10:27AM 13 EXPENSE OF ALL OF THE OTHER INSTRUCTIONS.

10:27AM 14 SO I THINK THE CRUST OF IT IS COVERED BY CREDIBILITY OF
10:27AM 15 WITNESSES, AND THERE'S SIMPLY NO NEED FOR IT.

10:27AM 16 THE COURT: ALL RIGHT. THANK YOU. MS. SAHARIA,
10:27AM 17 ANYTHING FURTHER ON THIS?

10:27AM 18 MS. SAHARIA: NO, YOUR HONOR.

10:27AM 19 THE COURT: ALL RIGHT. THANK YOU.

10:27AM 20 I DO SEE THIS AS, YOUR SUGGESTED NUMBER 8, IT'S A
10:28AM 21 COMPILATION OF SEVERAL OTHER JURY INSTRUCTIONS, BOTH SOME
10:28AM 22 PRELIMINARY AND SOME FINAL INSTRUCTIONS THAT RELATE TO THE 1.7
10:28AM 23 THAT WE TALKED ABOUT, ALSO CREDIBILITY, TALKING ABOUT
10:28AM 24 IMPEACHMENT AND THINGS.

10:28AM 25 I THINK THIS IS TOO MUCH INFORMATION, AND IT'S CONFUSING,

10:28AM 1 I THINK, AND IT COULD POTENTIALLY OFFER CONFUSION TO A JURY, AT
10:28AM 2 LEAST IN A PRELIMINARY INSTRUCTION. I THINK 1.7 AND THE OTHER
10:28AM 3 MODEL INSTRUCTIONS APPROPRIATELY CONVEY THESE CONCERNS THAT YOU
10:28AM 4 HAVE HERE.

10:28AM 5 SO I'M GOING TO DECLINE YOUR INVITATION TO GIVE YOUR
10:28AM 6 NUMBER 8.

10:28AM 7 I THINK YOUR NEXT IS NUMBER 13.

10:28AM 8 MS. SAHARIA: YES, YOUR HONOR.

10:28AM 9 THE COURT: THE GOVERNMENT AS A PARTY?

10:28AM 10 MS. SAHARIA: YES. AGAIN, IN MY EXPERIENCE THIS IS
10:28AM 11 A COMMON UNOBJECTIONABLE INSTRUCTION THAT SIMPLY INFORMS THE
10:29AM 12 JURY THAT THE GOVERNMENT AND THE DEFENDANT STAND AS EQUALS IN
10:29AM 13 THIS CASE. I THINK THERE IS ALWAYS THE RISK THAT JURORS
10:29AM 14 UNCONSCIOUSLY TEND TO DEFER TO THE GOVERNMENT SIMPLY BECAUSE IT
10:29AM 15 IS THE GOVERNMENT.

10:29AM 16 AGAIN, WE THINK THAT'S EVEN A HIGHER RISK HERE JUST GIVEN
10:29AM 17 THE LENGTH OF THE GOVERNMENT'S CASE, AND I THINK IT WOULD BE
10:29AM 18 HELPFUL FOR THE COURT TO GIVE THIS INSTRUCTION AT THE OUTSET OF
10:29AM 19 THE CASE SO THAT THE JURY UNDERSTANDS THAT, IN FACT, THE
10:29AM 20 GOVERNMENT AND THE DEFENSE DO STAND AS EQUALS, EVEN THOUGH IT
10:29AM 21 MAY NOT HEAR FROM US FOR QUITE A LONG TIME AT LEAST FOR AN
10:29AM 22 AFFIRMATIVE CASE, AND, AGAIN, IN MY EXPERIENCE THIS IS A COMMON
10:29AM 23 INSTRUCTION THAT FEDERAL COURTS OFTEN GIVE.

10:29AM 24 MR. LEACH: THE GOVERNMENT IS A PARTY IN EVERY
10:29AM 25 CRIMINAL CASE. IF IT WAS AS COMMON AS MS. SAHARIA SUGGESTS, I

10:29AM 1 THINK IT WOULD BE IN THE NINTH CIRCUIT MODEL INSTRUCTIONS. IT
10:29AM 2 IS NOT.

10:29AM 3 I VIEW THIS AS ARGUMENTATIVE AND UNNECESSARY, AND THERE'S
10:30AM 4 JUST NO NEED FOR THE COURT TO GIVE IT PARTICULARLY IN THE JURY
10:30AM 5 INSTRUCTIONS.

10:30AM 6 THE COURT: THANK YOU.

10:30AM 7 MS. SAHARIA, I INTEND TO COVER THIS TOPIC IN MY VOIR DIRE,
10:30AM 8 AND SO I'LL MENTION THIS BALANCE OF POWER I SUPPOSE AS I'LL
10:30AM 9 CALL IT NOW. IT WILL BE INCLUDED IN MY VOIR DIRE SO THE JURY
10:30AM 10 WILL HAVE AN OPPORTUNITY TO HEAR FROM THE COURT, AND YOU AND
10:30AM 11 MR. LEACH WILL HAVE AN OPPORTUNITY TO FOLLOW UP.

10:30AM 12 I DON'T THINK I NEED TO GIVE 13 AS IT IS.

10:30AM 13 MS. SAHARIA: THANK YOU. WE APPRECIATE THE COMMENTS
10:30AM 14 IN VOIR DIRE. THANK YOU.

10:30AM 15 THE COURT: LET'S SEE. 14 IS THE ABSENCE OF
10:30AM 16 CODEFENDANT.

10:30AM 17 MR. LEACH, SHOULD THIS BE GIVEN IN THE PRELIMINARY
10:30AM 18 INSTRUCTION? THIS IS 215 IS THE MODEL.

10:31AM 19 MR. LEACH: THE LANGUAGE CERTAINLY IS
10:31AM 20 UNOBJECTIONABLE, YOUR HONOR. I HAVEN'T SEEN IT DONE IN
10:31AM 21 PRELIMINARY INSTRUCTIONS. I DON'T -- WE WILL BE PROPOSING THIS
10:31AM 22 AS PART OF THE FINAL INSTRUCTIONS, BUT I'M REALLY NOT SURE, I'M
10:31AM 23 REALLY NOT SURE WHY IT WOULD NEED TO BE GIVEN, AND I THINK IT'S
10:31AM 24 JUST ADDING TO OUR ALREADY LENGTHY INSTRUCTION. AND SO I DON'T
10:31AM 25 SEE THE PARTICULAR NEED, BUT THE LANGUAGE HERE IS NOT

10:31AM 1 OBJECTIONABLE.

10:31AM 2 THE COURT: WELL, THANK YOU. THANK YOU. I DO THINK
10:31AM 3 THE JURY IS GOING TO BE INFORMED THAT THERE IS A CODEFENDANT.
10:31AM 4 MR. BALWANI'S NAME IS GOING TO BE MENTIONED, I THINK, AND I
10:31AM 5 THINK IT IS APPROPRIATE TO INFORM THE JURY ABOUT WHY HE'S NOT
10:31AM 6 HERE OR WHERE IS HE.

10:31AM 7 I THINK MODEL 2.15 ACCOMPLISHES THAT, AND I THINK IT'S
10:31AM 8 APPROPRIATE TO GIVE IT, AND I THINK THE PRELIMINARY
10:31AM 9 INSTRUCTIONS IS THE APPROPRIATE TIME TO DO IT. IT WILL BE
10:31AM 10 INCLUDED IN THE FINAL INSTRUCTIONS IN A DIFFERENT VERSION AS
10:31AM 11 YOU SUGGEST. SO I WILL GIVE THE 2.15 OR YOUR MODEL 14.

10:32AM 12 MS. SAHARIA: THANK YOU, YOUR HONOR.

10:32AM 13 THE COURT: AND THEN 17 IS QUESTIONS TO WITNESSES BY
10:32AM 14 JURORS DURING TRIAL. I DON'T PERMIT THAT. I THINK I'VE TOLD
10:32AM 15 YOU THAT BEFORE. THIS IS 1.14, MODEL 1.14. IT SEEMS TO ME
10:32AM 16 THAT OPTION ONE IS THE ONE THAT THE COURT WOULD READ.

10:32AM 17 MS. SAHARIA: WE AGREE, YOUR HONOR. WE PROPOSE THAT
10:32AM 18 YOU GIVE THAT INSTRUCTION.

10:32AM 19 MR. LEACH: I DON'T SEE A NEED FOR IT, YOUR HONOR.
10:32AM 20 I THINK IT MIGHT BE -- A WAIT-AND-SEE APPROACH IS BETTER, BUT
10:32AM 21 THE COURT SHOULD DEFER TO WHAT IT ORDINARILY DOES. THERE'S NO
10:32AM 22 UNIQUE CIRCUMSTANCES IN THIS CASE FOR ONE OVER THE OTHER.

10:32AM 23 MY ONLY CONCERN WAS THAT JURORS MAY NEVER ASK A QUESTION,
10:32AM 24 AND SO THERE JUST MAY NOT BE A NEED FOR IT, BUT WHATEVER THE
10:32AM 25 COURT'S PRACTICE IS, IS FINE WITH US.

10:32AM 1 THE COURT: OKAY. I'LL READ THIS.

10:32AM 2 THE REAL IMPORT AND IMPORTANT PART OF THIS IS THE SECOND
10:32AM 3 QUESTION: IF YOU'RE UNABLE TO HEAR, RAISE YOUR HAND SO WE CAN
10:33AM 4 CORRECT THE SITUATION. THAT I THINK IS APPROPRIATE.

10:33AM 5 I TELL THE JURORS THIS IN ADVANCE THAT THEY'RE NOT
10:33AM 6 PERMITTED TO ASK QUESTIONS.

10:33AM 7 SOME JURORS HAVE EXPERIENCE AND IN CIVIL CASES AND THEY'VE
10:33AM 8 BEEN PERMITTED TO ASK QUESTIONS AND EVEN IN SOME CRIMINAL
10:33AM 9 CASES.

10:33AM 10 SO I'LL READ THIS. I DON'T THINK IT IS GOING TO OCCUPY
10:33AM 11 TOO MUCH TIME.

10:33AM 12 MS. SAHARIA: YOUR HONOR, IF THERE IS A CIRCUMSTANCE
10:33AM 13 WHERE JURORS WILL BE SEATED IN THE GALLERY, WE WOULD SUGGEST
10:33AM 14 THAT THE COURT ADD TO THAT SENTENCE "IF YOU CANNOT HEAR OR
10:33AM 15 SEE," I THINK THAT WOULD BE A HELPFUL ADDITION.

10:33AM 16 THE COURT: RIGHT.

10:33AM 17 MS. SAHARIA: OR THE PLEXIGLASS CREATING SOME SORT
10:33AM 18 OF GLARE EVEN.

10:33AM 19 THE COURT: THAT'S A CONCERN I HAD, TOO, WITH THE
10:33AM 20 PLEXIGLASS. I DON'T KNOW HOW IT LOOKS FROM WHERE YOU'RE
10:33AM 21 SEATED. YOU'RE THE BEST JUDGES OF THAT.

10:33AM 22 BUT IF THERE'S A REFLECTION ISSUE OR YOU THINK THERE IS
10:33AM 23 SOME SIGHT ISSUES, I WOULD HOPE THAT COUNSEL WOULD BRING THAT
10:33AM 24 TO MY ATTENTION SO I COULD CORRECT THAT. YOU'RE SEEING THE
10:33AM 25 JURORS THROUGH A DIFFERENT VIEW -- EXCUSE ME, THE WITNESSES

10:33AM 1 THROUGH A DIFFERENT VIEW THAN THE JURORS WILL, BUT I KNOW
10:34AM 2 THESE -- THIS PLEXIGLASS REFLECTS SO.

10:34AM 3 MS. SAHARIA: I THINK THAT IS IT, YOUR HONOR.

10:34AM 4 THE COURT: MS. SAHARIA, I THINK WE'VE EXHAUSTED
10:34AM 5 YOUR SUGGESTIONS?

10:34AM 6 MS. SAHARIA: YES.

10:34AM 7 THE COURT: OKAY. MR. LEACH, DO YOU HAVE ANYTHING
10:34AM 8 ELSE THAT YOU WOULD LIKE TO COVER THIS MORNING?

10:34AM 9 MR. LEACH: NOTHING FURTHER, YOUR HONOR.

10:34AM 10 THE COURT: ANYTHING ELSE FROM YOUR TEAM?

10:34AM 11 MS. SAHARIA: NO, YOUR HONOR. NOTHING ON THE JURY
10:34AM 12 INSTRUCTIONS. LET ME JUST CONSULT WITH MR. DOWNEY ABOUT OTHER
10:34AM 13 ISSUES.

10:34AM 14 THE COURT: SURE. OF COURSE.

10:34AM 15 MR. DOWNEY.

10:34AM 16 MR. DOWNEY: I HAVE TWO GRANULAR ISSUES, BUT IT
10:34AM 17 RELATES TO THE GRANULAR WORK THAT THE COURT IS DOING RIGHT NOW
10:34AM 18 SO I THOUGHT I WOULD INQUIRE.

10:34AM 19 YOUR HONOR DESCRIBED THE PROCEDURE BY WHICH THE JURORS ARE
10:34AM 20 BROUGHT IN IN PANELS OF 20. I'M WONDERING IF THEY'RE BROUGHT
10:34AM 21 IN BY JUROR NUMBER OR IF THERE IS SOME OTHER SYSTEM TO SELECT
10:34AM 22 THE 20 WHO ENTER AND HOW WE MIGHT --

10:34AM 23 THE COURT: I THINK WE'LL HAVE MORE THAN 20. I'M
10:35AM 24 INFORMED THAT THEY COULD BRING UP TRANCHES OF PERHAPS 50. I
10:35AM 25 DON'T THINK WE'LL HAVE THAT MANY AT ONE TIME, BUT I THINK WE'LL

10:35AM 1 HAVE MORE THAN 20.

10:35AM 2 AS I UNDERSTAND IT, THEY'RE BROUGHT UP BY THEIR JUROR
10:35AM 3 NUMBERS. LET ME SAY YOU ARE GOING TO, YOU AND MR. LEACH, WILL
10:35AM 4 HAVE A COPY OF THE LIST THAT I HAVE. IT WON'T BE THE RANDOM
10:35AM 5 COPY. IT WILL BE THE COPY OF THE ORDER OF HOW THEY'LL BE
10:35AM 6 CALLED, HOW THEY'LL BE SEATED SO WE'LL ALL KNOW WHO IS COMING
10:35AM 7 UP NEXT. YOU CAN LOOK AT THAT AND ENGAGE YOUR SELECTIONS
10:35AM 8 ACCORDINGLY, BOTH PRELIMINARY AND WHEN WE'RE IN THE COURTROOM.
10:35AM 9 SO YOU'LL HAVE THAT.

10:35AM 10 SO THEY WILL BE BROUGHT UP, I THINK, BY THAT NUMBERING
10:35AM 11 SYSTEM AS I UNDERSTAND IT.

10:35AM 12 MS. KRATZMANN, IS THAT YOUR UNDERSTANDING?

10:35AM 13 THE CLERK: YES, YOUR HONOR, IT WILL BE IDENTIFIED
10:35AM 14 BY THE JUROR NUMBER ON THE LIST.

10:35AM 15 MR. DOWNEY: THANK YOU.

10:35AM 16 THE SECOND INQUIRY THAT I HAD WAS JUST RELATED TO THE
10:35AM 17 ICEBREAKER THAT THE COURT INTENDS TO USE WHICH YOU'VE USED IN
10:36AM 18 OTHER CASES.

10:36AM 19 I CAN IMAGINE THAT IN OTHER CASES IN INTRODUCING
10:36AM 20 THEMSELVES THE JURORS HAVE DONE SO FULLY, USED THEIR NAME AND
10:36AM 21 SO FORTH.

10:36AM 22 I WONDER IF THE COURT MIGHT CONSIDER IN THE CONTEXT OF
10:36AM 23 THIS CASE WHERE THERE'S SUBSTANTIAL EXTERNAL COVERAGE AND SO
10:36AM 24 FORTH IF JURORS MIGHT BE LESS COMFORTABLE WITH USING THEIR NAME
10:36AM 25 IN OPEN COURT. SO I JUST RAISE THAT FOR THE COURT.

10:36AM 1 THE COURT: THANK YOU. I APPRECIATE THAT
10:36AM 2 OBSERVATION. MAYBE WE'LL JUST HAVE THEM STATE THEIR JUROR
10:36AM 3 NUMBER.

10:36AM 4 MR. DOWNEY: FAIR ENOUGH.

10:36AM 5 THE COURT: ALTHOUGH THEIR NAMES ARE GOING TO BE
10:36AM 6 CALLED OUT BY MS. KRATZMANN TO SIT, SO THEY WILL BE JUROR
10:36AM 7 NUMBER 4. THEY DON'T KNOW JUROR NUMBER 4, THEY KNOW THEIR
10:36AM 8 NAMES, AND SO THEIR NAMES WILL BE PART OF THE PUBLIC RECORD IN
10:36AM 9 THAT REGARD.

10:36AM 10 CANDIDLY, WHEN I REFER TO THEM AND TALK WITH THEM AND A
10:36AM 11 JUROR RAISES THEIR HAND, I ALWAYS USE THEIR SURNAME AS OPPOSED
10:36AM 12 TO JUROR NUMBER 43. SO TO THE EXTENT THAT THEIR NAMES WILL BE
10:36AM 13 PUBLIC, THAT'S THE EXTENT OF IT.

10:37AM 14 BUT I APPRECIATE THAT, AND PERHAPS I CAN JUST ASK THEM TO
10:37AM 15 STATE THEIR JUROR NUMBER FOR PURPOSES OF THE QUESTIONNAIRE.

10:37AM 16 MR. DOWNEY: THANK YOU, YOUR HONOR.

10:37AM 17 THE SECOND QUESTION I WOULD HAVE IN ANTICIPATION OF THAT
10:37AM 18 PROCESS IS IF IT'S CONSISTENT WITH YOUR HONOR'S JUDGMENT OF
10:37AM 19 WHAT IS SAFE, IT MIGHT BE GOOD AS PART OF THAT PROCESS IF THE
10:37AM 20 JUROR WHO IS INTRODUCING HIM OR HERSELF COULD UNMASK JUST FOR
10:37AM 21 THAT BRIEF PERIOD WE COULD GET A BETTER SENSE AS WE'RE GOING
10:37AM 22 THROUGH THE JURY SELECTION PROCESS.

10:37AM 23 I DON'T KNOW EXACTLY HOW THE PROCESS WILL WORK, BUT IF
10:37AM 24 THAT'S POSSIBLE, THAT'S A REQUEST THAT WE WOULD MAKE.

10:37AM 25 THE COURT: JUST FOR THAT INTRODUCTION?

10:37AM 1 MR. DOWNEY: YEAH, JUST TO INTRODUCE THEMSELVES. I
10:37AM 2 DON'T KNOW HOW THE ICEBREAKER TYPICALLY TAKES, BUT I'M
10:37AM 3 ANTICIPATING IT'S SOMEWHAT BRIEF, AND IF IT COULD BE JUST FOR
10:37AM 4 THAT SHORT PERIOD.

10:37AM 5 THE COURT: MR. LEACH, DO YOU WANT TO CHIME IN?

10:38AM 6 MR. LEACH: I THINK IT WOULD BE APPROPRIATE,
10:38AM 7 YOUR HONOR, TO ASK IF THEY'RE COMFORTABLE REMOVING THEIR MASK
10:38AM 8 FOR THAT SMALL AMOUNT OF TIME. I CERTAINLY WOULDN'T WANT TO
10:38AM 9 REQUIRE IT IF THE JURORS ARE NOT COMFORTABLE BUT SUGGESTING
10:38AM 10 THAT THEY CAN DO IT I THINK WOULD BE APPROPRIATE.

10:38AM 11 MR. DOWNEY: AND THAT'S FINE. I THINK THAT'S A GOOD
10:38AM 12 SUGGESTION.

10:38AM 13 THE COURT: THE OTHER ISSUE WITH THAT IS THAT WE'RE
10:38AM 14 NOT GOING TO HAND A MIKE TO THE JURORS, SO FOR THIS PURPOSE WE
10:38AM 15 MIGHT HAVE TO HAVE A LECTERN, AND WE DO HAVE ONE, AND WE CAN
10:38AM 16 HAVE THEM EACH APPROACH THE LECTERN. THAT WILL BE A LITTLE BIT
10:38AM 17 CUMBERSOME TO HAVE THEM EXIT THE BOX, GO AND DO THIS.

10:38AM 18 THIS WORKS WHEN WE HAVE A MICROPHONE THAT WE CAN HAND
10:38AM 19 AROUND. IT'S MUCH MORE EFFICIENT, AND SO LET ME THINK ABOUT
10:38AM 20 THAT. I JUST DON'T KNOW ONCE WE'VE SEATED 12, 15 PEOPLE IN OUR
10:38AM 21 BOX AND THEN TO HAVE THEM ONE BY ONE EXIT AND CLIMB OVER EACH
10:38AM 22 OTHER FOR THAT PURPOSE I THINK MIGHT BE DIFFICULT.

10:39AM 23 WE MIGHT HAVE THEM STAND WITHOUT BENEFIT OF A MICROPHONE,
10:39AM 24 AND THAT'S WHERE THEIR MASK COULD BE WITHDRAWN AND THEY COULD
10:39AM 25 SPEAK, AND I'M SURE WE'D BE ABLE TO HEAR THEM, YOU WOULD BE

10:39AM 1 ABLE TO HEAR THEM, AND MOST IMPORTANTLY, OUR COURT REPORTER
10:39AM 2 WILL BE ABLE TO HEAR THEM. SO THAT MIGHT BE THE WAY TO DO IT
10:39AM 3 WITHOUT A MICROPHONE.

10:39AM 4 SO --

10:39AM 5 MR. DOWNEY: I APOLOGIZE FOR BOGGING US DOWN WITH
10:39AM 6 VERY GRANULAR BUT --

10:39AM 7 THE COURT: NO. IT'S A GOOD POINT. IT'S A GOOD
10:39AM 8 POINT.

10:39AM 9 ANYTHING ELSE THAT WE HAVEN'T COVERED? ANY OF YOUR TEAMS
10:39AM 10 HAVE ANYTHING?

10:39AM 11 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.
10:39AM 12 THANK YOU.

10:39AM 13 THE COURT: I THINK OUR WORK IS DONE THIS MORNING.

10:39AM 14 MR. DOWNEY: THANK YOU, YOUR HONOR.

10:39AM 15 THE COURT: THANK YOU. IT'S NICE TO SEE EVERYONE.
10:39AM 16 STAY SAFE.

10:39AM 17 I'LL HEAR FROM YOU NEXT WEEK -- WE'LL SEE EACH OTHER THIS
10:39AM 18 WEEK. BUT IF YOU HAVE ANYTHING WITH REGARD TO YOUR MEET AND
10:39AM 19 CONFER CONFERENCES, PLEASE FEEL FREE TO LET ME KNOW OR
10:39AM 20 MS. KRATZMANN KNOW IF YOU HAVE ANY ISSUES.

10:40AM 21 MR. DOWNEY: THANK YOU, YOUR HONOR.

10:40AM 22 MS. SAHARIA: WHAT TIME WILL WE CONVENE? I THINK
10:40AM 23 YOU SAID 10:00 A.M. STANDARD TIME, BUT I DON'T KNOW IF YOU HAVE
10:40AM 24 A DIFFERENT TIME.

10:40AM 25 THE COURT: MS. KRATZMANN, WHERE ARE WE SCHEDULED

10:40AM 1 NOW? IS IT 10:00 A.M. ON FRIDAY?

10:40AM 2 THE CLERK: IT IS 10:00 A.M.

10:40AM 3 THE COURT: DO YOU FOLKS WANT TO START EARLIER?

10:40AM 4 SHOULD WE START AT 9:00?

10:40AM 5 MS. SAHARIA: THAT'S FINE, YOUR HONOR.

10:40AM 6 THE COURT: MS. KRATZMANN, OF COURSE, WHO HAS
10:40AM 7 KNOWLEDGE OF ALL THINGS, REMINDED ME THAT THE JURORS ARE GOING
10:40AM 8 TO BE COMING IN, AREN'T THEY, TO FILL THE QUESTIONNAIRE OUT?
10:41AM 9 JUST TO AVOID ANY ISSUES WITH ELEVATORS AND THINGS, LET'S KEEP
10:41AM 10 IT AT 10:00 BECAUSE OUR JURY ASSEMBLY ROOM IS ON THE SECOND
10:41AM 11 FLOOR, AND I THINK IT'S BEST IF WE DO THAT. BY 10:00 O'CLOCK
10:41AM 12 AT LEAST THAT FIRST TRANCHE SHOULD BE FINISHED HOPEFULLY, AND
10:41AM 13 THAT WILL AVOID ANY UNNECESSARY CONTACT.

10:41AM 14 SO LET'S KEEP IT AT 10:00 THANK YOU.

10:41AM 15 ALL RIGHT. THANKS VERY MUCH.

10:41AM 16 THE CLERK: COURT IS ADJOURNED.

10:41AM 17 (COURT CONCLUDED AT 10:41 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: AUGUST 18, 2021